IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Fausto ELIAS MONTIJO, Petitioner, v. John E. CANTU, Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Fred FIGUEROA, Warden of Eloy Detention Center; Todd LYONS, Acting Director, Immigration and Customs Enforcement and Removal Operations. Respondents.	Case No. 2:25-cv-03445-SMB--CDB **REPLY TO RESPONSE TO MOTION FOR INJUNCTIVE RELIEF**

INTRODUCTION

Petitioner Fausto Elias Montijo respectfully submits this reply in support of his motion for injunctive relief. The Immigration Judge (IJ) correctly held that 8 U.S.C. § 1226(a) governs Petitioner's custody and granted bond. The government's response fails to show that § 1225(b)(2)(A) applies here. Petitioner therefore remains unlawfully detained and asks the Court to grant this motion for a preliminary injunction.

ARGUMENT

1. Petitioner is likely to succeed on the merits of his claim because Section 1226(a), not Section 1225(b)(2)(A), governs Petitioner's custody

The government contends that this Court should ignore the voluminous number of decisions finding that Section 1226(a), not Section 1225(b)(2)(A), detention applies here. Response at 3. To date, dozens of federal district judges have either outright rejected the government's novel interpretation,[1] or found that noncitizens challenging the government's interpretation were substantially likely to prevail on the merits.[2]. Instead of relying on these numerous decisions,

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[1] *Belsai D.S. v. Bondi*, No. 25-3682 (D. Mn. Oct. 1, 2025) (Menendez, J.) (granting habeas petition); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tx. Oct. 1, 2025) (Cardone, J.) (granting habeas petition); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tx. Sept 26, 2025) (Hittner, J.) (granting habeas petition); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. Sept. 24, 2025) (Johnson, J.) (granting habeas petition); *Singh v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22, 2025) (Jennings, J.) (granting habeas petition); *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.) (granting habeas petition); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.) (granting habeas petition); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025) (Jenning, J.) (granting habeas petition); *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.) (granting habeas petition); *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.) (granting habeas petition); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.) (granting habeas petition); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.) (granting habeas petition); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.) (granting habeas petition); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Talwani, J.) (granting habeas petition); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Ho, J.) (granting habeas petition); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.) (granting habeas petition); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025) (Kobick, J.) (granting habeas petition); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Tostrud, J.) (granting habeas petition); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Rubin, J.) (granting habeas petition); *Romero v. Hyde*, No. 25-11631, __ F.Supp.3d __, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.) (granting habeas petition); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Ho, J.) (granting habeas petition); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Kobick, J.) (granting habeas petition); *Diaz Martinez v. Hyde*, No. 25-11613, __F.Supp.3d __, 2025 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.) (granting habeas petition); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7, 2025) (Kobick, J.) (granting habeas petition).

[2] *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Ca Sept. 23, 2025) (Sherriff, J.) (granting preliminary injunction); *Aceros v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.) (granting preliminary injunction); *Guzman v. Andrews*, No. 25-01015, 2025 LX 354551 (E.D. Cal. Sept. 9, 2025) (Sherriff, J.) (granting preliminary injunction); *Mosqueda v. Noem*, No. 25-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (Snyder, J.) (granting temporary

Respondents cite a single case in support of their claim, *Sixtos Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC (S.D. Cal. Sep. 24, 2025). However, that case is neither on point nor persuasive. In *Sixtos Chavez*, the district court denied a temporary restraining order on the grounds that the petitioners had not demonstrated "serious questions about the application of Section 1225 to aliens present in the United States." *Id.* at p.8. The court's analysis of Section 1225, however, was limited to determining whether the petitioners, as non-citizens present in the United States but not admitted, were "applicants for admission" under Section 1225. *Id.* But that is not the statutory construction issue before this Court. Petitioner here agrees that he is an "applicant for admission." He contests whether he is an "applicant for admission . . . *seeking admission*" within the scope of 1225(b)(2), an issue the district court *Sixtos Chavez* did not address at all. The government's response also fails to make this distinction, by failing to address the seeking admission requirement. Government's Response at 8-9.

It is not difficult to understand why the overwhelming majority of federal district courts have rejected the government's novel interpretation. By its terms, 8 U.S.C. § 1225(b)(2)(A) only applies to noncitizens who are "seeking admission," and Congress defined "admission" as the "lawful

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restraining order); *Nieves v. Kaiser*, No. 25-6921, 2025 LX 320701 (N.D. Cal. Sept. 3, 2025) (Beeler, J.) (granting preliminary injunction); *Garcia v. Noem*, No. 25-2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw. J.) (granting temporary restraining order); *Garcia v. Kaiser*, No. 25-06916, 2025 LX 322337 (N.D. Cal. Aug. 29, 2025) (Gonzalez Rogers, J.) (granting preliminary injunction); *Kostak v. Trump*, No. 25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Edwards, J.) (granting temporary restraining order and preliminary injunction); *Benitez v. Noem*, No. 25-02190, 2025 LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.) (granting temporary restraining order); *Ramirez Clavijo v. Kaiser*, No. 25-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (Freeman, J.) (granting preliminary injunction); *Arrazola-Gonzalez v. Noem*, No. 25-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (Wright, J.) (granting temporary restraining order); *Maldonado v. Olson*, No. 25-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Nelson, J.) (granting temporary restraining order); *Maldonado Bautista v. Santacruz*, No. 25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025) (granting temporary restraining order); *Vazquez v. Bostock*, No. 25-05240, 779 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.) (granting preliminary injunction).

entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Accordingly, "[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the country would read the word 'entry' out of the definitions of 'admitted' and 'admission.'" *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (citing 8 U.S.C. 1101(a)(13)(A)).

Thus, Petitioner prevails regardless of the scope of § 1225(a)(1)'s definition of "applicant for admission." This is because classification as an "applicant for admission" is not sufficient to render someone subject to mandatory detention under § 1225(b)(2). The "applicant for admission" must *also* be "seeking admission," and that is clearly not the case for Petitioner.

Again, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioner. Section 1226(a) permits the release of noncitizens who are detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens—including certain categories of noncitizens who are inadmissible under 8 U.S.C. § 1182(a)—and subjects them instead to mandatory detention. *See, e.g.,* § 1226(c)(1)(A), (C). If § 1226(a) could never apply to inadmissible noncitizens, there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, § 1226(c) would only have needed to address people who are deportable for certain offenses under 8 U.S.C. § 1227(a).

The district court's superfluity analysis in *Sixtos Chavez* also misses the mark. The district court found that the government's expansive interpretation of 1225(b) does not render the Laken Riley amendment (LRA) to Section 1226 superfluous because "Section 1226(c) simply removed the Attorney General's detention discretion for aliens charged with specific-but not all-crimes. The Attorney General may still exercise her detention discretion under § 1226(a) for any other aliens

falling under that subsection who are not charged with the specific crimes carved out by § 1226(c)." *Id.* at p. 9. But under the government's interpretation of 1225(b)(2), there would already be automatic mandatory detention for all of the noncitizens newly covered by 1226(c). In that case, there was no need to specifically provide for mandatory detention of those charged with certain crimes under Section 1226. The district court's reading in *Sixtos Chavez* does indeed render the LRA superfluous. *See Pelico v. Kaiser*, 25-cv-07286-EMC (EMC) (N.D. Cal. Oct 3, 2025) (distinguishing and refusing to adopt the analysis in *Sixtos Chavez v. Noem*).

Indeed, the LRA added language to § 1226 that directly references those who are inadmissible under § 1182(a)(6) because they are present without admission or under § 1182(a)(7) because of the lack of valid documentation. *See* LRA Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). The government claims this analysis, adopted by numerous courts is "improbable". Government Response at 8-9. But by including such individuals under § 1226(c) and carving them out of § 1226(a) if they have been arrested, charged with, or convicted of certain crimes, Congress reaffirmed that § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). *See Rodriguez Vazquez v. Bostock,* No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. June 6, 2025) (explaining these amendments explicitly provide that § 1226(a) covers people like Petitioner because the "'specific exceptions' [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention."); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) ("if, as the Government argue[s], . . . a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect." 2025 WL 2084238, at *7; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July

7, 2025) (similar). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

8 U.S.C. § 1225 further defines its scope by reference to "inspections"—a term not defined in the INA, but which typically connotes an examination upon or soon after physical entry. *See* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); §§ 1225(b)(1)–(2) (referring to "inspections" in their titles); § 1225(b)(2)(A), (b)(4) (referring to "examining immigration officers'); § 1225(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States"); *see also Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute). Many statutory provisions, various regulations, and agency precedent also discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010)); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

The statutory and regulatory text's use of the present and present progressive tenses further excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States. *See* 8 U.S.C. § 1225(b)(2)(C) (addressing the "[t]reatment of [noncitizens] *arriving* from contiguous territory," i.e. those who are "*arriving* on land") (emphasis added). As the Supreme Court recognized, this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether

a [] [noncitizen] seeking to enter the country is admissible," and § 1225 is concerned "primarily [with those] seeking entry." *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018).

Moreover, the Justice Department's own regulations only preclude immigration judges from granting bond to "[a]rriving aliens," 8 C.F.R. 1003.19(h)(1)(B)(ii), as distinct from noncitizens who previously entered the country and are merely present without admission. When the Justice Department created these regulations following notice and comment, it specifically stated that "'aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'" *Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. April 24, 2025) (quoting 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)). And, "an administrative agency may not slip by the notice and comment rule-making requirements needed to amend a rule by merely adopting a de facto amendment to its regulation through adjudication." *Marseilles Land & Water Co. v. FERC*, 345 F.3d 916, 920 (D.C. Cir. 2003) (Silberman, J.) (citing cases). *See also Patel v. INS*, 638 F.2d 1199, 1202 (9th Cir. 1980) (rejecting BIA decision that imposed additional requirement that the INS declined to impose during notice and comment rulemaking).

The legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also supports the conclusion that § 1226(a) applies to Petitioner. In passing IIRIRA, Congress was focused on the perceived problem of recent arrivals to the United States who did not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after an unlawful entry to mandatory detention if arrested. This is important because prior to IIRIRA, people like Petitioner were not subject to mandatory detention.

See 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest and release noncitizens physically present in the United States pending a determination of deportability). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have explained so or spoken more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress explained precisely the opposite, noting that the new § 1226(a) merely "restates the current provisions in [INA] section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a [] [noncitizen] *who is not lawfully in the United States*." H.R. Rep. No. 104- 469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

The agency's interpretation of IIRIRA soon after its enactment is consistent with this history. As noted in a recent decision from this judicial district, "a 1997 interim rule issued 'to implement the provisions of [IIRIRA],' which had passed six months earlier . . . explained that '[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.'" *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (quoting 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

The BIA acknowledged that reading 8 U.S.C. § 1225(b)(2)(A) to apply to individuals who entered without inspection would create a redundancy in the statute by subjecting such individuals to mandatory detention under two separate provisions. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 222. The BIA dismissed such redundancy as permissible and posited that the LRA did not purport to "overrule" 8 U.S.C. § 1225(b)(2)(A). *Id.* at 219, 222. But once again, in reaching this conclusion, the BIA did not address the requirement of 8 U.S.C. § 1225(b)(2)(A) that an individual must be "seeking admission" to be subject to § 1225(b)(2)(A). To give substance to the phrase

"seeking admission" would both ensure fidelity to the plain language of the statute and eliminate concerns about redundancies between § 1226(c) and § 1225(b)(2)(A): individuals who entered without inspection and have been present in the United States for more than two years would not be subject to detention, *unless* they were subject to one of the mandatory detention provisions of the LRA. Petitioner is thus likely to succeed on the merits of his petition.

2. As DHS and the Immigration Judge determined during the bond proceedings, Petitioner has never been arrested for attempting to smuggle methamphetamine

Though it is largely irrelevant here, the government's response seems to rely on an alleged prior methamphetamine arrest to justify detention. Response at 2. As was thoroughly discussed before the immigration court, that arrest in fact pertains to a different individual who shares the same A-number but is not Petitioner. As described in the attached exhibit submitted by the government during the bond proceedings, "[s]ubject's alien number also returns to another subject who does have [redacted] and [redacted] history. Photos show the 2 subjects with the same number are different men." Ex. D, Petitioner's Bond Exhibit List at 7. Indeed, the evidence the government submitted to the immigration court, as shown in the Department of Homeland Security Evidence Submission, shows that Petitioner has no criminal history. Ex. E, DHS Evidence Submission at 6. Further, the Immigration Judge's decision makes no reference whatsoever to any drug arrest, which would undoubtedly be a factor to consider in any risk of flight or danger to the community analysis, which is necessary in a bond proceeding. *See* Habeas Petition, Ex. 4.; *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018); *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009) ("Dangerous aliens are properly detained without bond. [. . .] Only if an alien demonstrates that he [or she] does not pose a danger to the community should an Immigration Judge continue to a determination regarding the extent of flight risk posed by the alien."). The Court should thus

disregard the government's reliance on any such arrest because the record shows it was not Petitioner.

3. Petitioner will suffer irreparable harm in the absence of a preliminary injunction

In the absence of a PI, Petitioner will continue to be unlawfully detained by Respondents under § 1225(b)(2) and denied the freedom the IJ has already established is appropriate. Petitioner has now been in custody for almost four months. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Petitioner has significant family ties in the United States, including a lawful permanent resident wife to whom he has been married for 27 years, a U.S. citizen child, and a child with Deferred Action for Childhood Arrivals. His other family members include his brother, his uncle, and many cousins, nieces, and nephews. He owns a home in Tucson, pays taxes, and is an active member of the Saint John the Evangelist Church. Twenty-six of his friends and family members have submitted letters of support for his successful bond redetermination hearing. He has no criminal record. Petitioner was granted bond by an IJ, and as such he is neither a flight risk nor a danger to the community.

4. The balance of equities tips in Petitioner's favor and a PI is in the public interest

Because the policy preventing Petitioner from realizing the bond the immigration judge granted "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019); *see also Moreno Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (quoting approvingly district judge's declaration that "it is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to continue"). Indeed, Respondents "cannot

suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

CONCLUSION

For these reasons, the Court should grant Petitioner's Motion for a Preliminary Injunction.

Dated: October 9, 2025

Respectfully Submitted,

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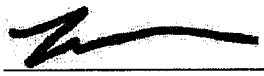
WORD COUNT CERTIFICATION

The undersigned counsel of record for Petitioner certifies that this Memo contains 3,418 words, which complies with the word limit of L.R. 11-6.1.



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