MICHAEL KAGAN
Nevada Bar No. 12318C
DRIANNA DIMATULAC
YILU SONG
Student Attorneys Practicing
Under Nevada Supreme Court Rule 49.3
**UNLV IMMIGRATION CLINIC**
Thomas & Mack Legal Clinic
William. S. Boyd School of Law
University of Nevada, Las Vegas
P.O. Box 71075
Las Vegas, Nevada
Telephone: (702) 895-3000
Facsimile: (702) 895-2081
Email: Michael.Kagan@unlv.edu
Email: DimatD1@unlv.nevada.edu
Email: SongY10@unlv.nevada.edu

*Counsel for Petitioner*

**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEVADA (Las Vegas)**

**E. C.,**

*Petitioner*,

v.

**KRISTI NOEM**,
in her official capacity as
Secretary, U.S. Department of
Homeland Security; 245 Murray Lane
SW, Washington, DC 20528;

**U.S. DEPARTMENT OF HOMELAND SECURITY**;

**PAMELA J. BONDI**,
in her official capacity as
Attorney General of the United States,
950 Pennsylvania Avenue, NW,
Washington, DC, 20530;

Case No.: 2:25-cv-01789

**MOTION FOR TEMPORARY RESTRAINING ORDER**

**U.S. DEPARTMENT OF JUSTICE**;

**TODD LYONS**,
in his official capacity as Acting Director and Senior Official Performing the Duties of the Director for U.S. Immigration and Customs Enforcement, 500 12th Street, SW, Washington, DC 20536;

**JASON KNIGHT**,
in his official capacity as Acting Field Office Director, Salt Lake City Field Office Director, U.S. Immigration & Customs Enforcement, 2975 Decker Lake Drive Suite 100, West Valley City, UT 84119-6096

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**; and

**JOHN MATTOS**,
in his official capacity as Warden, Nevada Southern Detention Facility, 2190 E. Mesquite Ave. Pahrump, NV 89060

*Respondents.*

Petitioner is presently detained by U.S. Immigration and Customs Enforcement. In accordance with Rule 65 of the Federal Rules of Civil Procedure and the All Writs Act, Petitioner hereby applies for a temporary restraining order or preliminary injunction requiring that Respondents grant Petitioner a custody redetermination hearing in Immigration Court on the merits within seven days or immediately release him from custody.

Petitioner does not seek ex parte consideration of this Motion. However, because Petitioner is suffering the irreparable harm of continuing detention, he asks that the Court

expeditiously order that his Petition for a Writ of Habeas Corpus be served on Respondents and for expedited briefing and consideration of this Motion.

Petitioner has separately filed a motion requesting that he be permitted to proceed under pseudonym to protect his safety as an asylum-seeker.

As set forth in the accompanying Memorandum of Law, Respondents are detaining Petitioner in violation of the Immigration and Nationality Act and constitutional due process. Without a restraining order or preliminary injunction order a bond hearing in Immigration Court, Petitioner will suffer irreparable injury by continued unlawful detention.

DATED this 22nd day of September, 2025.

Respectfully Submitted,

/s/Michael Kagan
Michael Kagan
Nevada Bar. No. 12318C

/s/Drianna Dimatulac
Drianna Dimatulac
Student Attorney Practicing
Under Nevada Supreme Court Rule 49.3

/s/Yilu Song
Yilu Song
Student Attorney Practicing
Under Nevada Supreme Court Rule 49.3

**UNLV IMMIGRATION CLINIC**
Thomas & Mack Legal Clinic
William S. Boyd School of Law
University of Nevada, Las Vegas
P.O. Box 71075
Las Vegas, Nevada 89170
Telephone: 702-895-3000
Facsimile: 702-895-2081

**MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER**

Petitioner respectfully requests this Court's immediate action to secure a bond hearing on the merits within seven days in accordance with the applicable statutes, or alternatively, Petitioner's immediate release from detention. He applies for a Temporary Restraining Order, or alternatively, a Preliminary Injunction, for the reasons stated below.

## I. INTRODUCTION

1. Petitioner is a 53-year-old resident of Orem, Utah. *See* Declaration of Petitioner ("**Ex. A**") at 001. Three months ago, Petitioner was stripped away from his family, job, and community, after the police—who did not speak Spanish and therefore could not communicate with Petitioner—mistakenly arrested him for domestic violence, robbery, and assault. *Id.* at 004. At trial, a unanimous jury acquitted Petitioner on all counts. *See* Jury Verdict Form ("**Ex. B**") at 006–008. But rather than being released, Immigration and Customs Enforcement immediately seized and detained him. Moreover, despite his full acquittal by a jury, ICE has included Petitioner on a "Worst of the Worst" public media post, smearing him for charges for which he has been found innocent. *See* ICE, "Worst of the Worst" (August 3, 2025) ("**Ex. C**") at 009–013; *see also* ICE Salt Lake City Tweet (August 4, 2025) ("**Ex. D**") at 014–015.

Petitioner has now been in ICE detention for seven weeks without receiving a bond hearing. It would be futile for him to ask for a bond hearing in Immigration Court, because ICE and the Department of Justice would take the position that he is subject to mandatory detention, for two different reasons. First, he entered the country without admission or parole. Second, he was arrested and charged with a theft-related crime, even though he was acquitted on all charges.

This is a clear violation of both the Immigration and Nationality Act and the Due Process Clause of the United States Constitution. Therefore, he filed a writ of habeas corpus under 28 U.S.C. § 2241 with this Court. Petitioner now moves for a TRO, or in the alternative, a preliminary injunction, to ensure that the Immigration Court promptly holds a bond hearing in his case.

## II. FACTS

Petitioner is originally from Ecuador, where he fled violent threats demanding that he traffic drugs and weapons through a children's program. Ex. A at 002–003. He is in the process of applying for asylum in the United States.[1]

On February 2, 2024, Petitioner entered the U.S. without inspection, coming from Sonora, Mexico and arriving in Lukeville, Arizona. *See* Notice to Appear ("**Ex. E**") at 016–018. The Notice to Appear ("NTA") issued by the Department of Homeland Security designated him as "an alien present in the United States who has not been admitted or paroled." *Id.* at 017. It further stated that Petitioner is removable under INA § 212(a)(6)(A)(i) as "an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General." *Id.*

Petitioner was scheduled for a removal hearing on April 9, 2027. *Id.* After release, Petitioner reunited with his family in Utah, and in August 2024, he filed an I-589 application for asylum. Ex. A at 003; *see* I-589 Application for Asylum ("**Ex. F**") at 019–022.

[1] More details regarding Petitioner's background are included in the Petition, ECF No. 1. Some details are omitted here to preserve his anonymity. He is separately requesting to proceed under pseudonym and to seal exhibits which contain identifying information.

On June 16, 2025, local Utah police arrested Petitioner. *See* Declaration of K.V. ("**Ex. G**") at 025. His fiancée, K.V., who was [redacted], became upset when Petitioner had to leave for work. *Id.* While Petitioner attempted to prevent K.V. from harming herself, she hurt her arm on the car door. *Id.* A neighbor who heard the commotion called the police for assistance. *Id.* The responding officer, who did not speak Spanish and therefore could not communicate with Petitioner or K.V., mistakenly attributed her injuries to him. *Id.* As a result, he was arrested and booked in Utah County Jail. *Id.*

The State of Utah charged Petitioner with robbery, aggravated assault, assault, and three counts of domestic violence in the presence of a child. *See* Minutes Showing Not Guilty Verdicts on All Counts ("**Ex. H**") at 027. After a two-day jury trial, at which K.V. testified for Petitioner, a unanimous jury found him not guilty on all counts. Ex. B at 007–008. The judge dismissed the case on August 4, 2025. Ex. H at 038. Upon Petitioner's release from jail, ICE seized him and brought him to the Nevada Southern Detention Center in Pahrump, Nevada. Ex. A at 002.

At the same time ICE arrested Petitioner ICE issued at least two public statements about Petitioner that smeared him with the charges for which the jury had just unanimously cleared him. ICE included him on a "Worst of the Worst" public media post. Ex. C at 009. ICE also issued a "tweet" on the social media platform X, posting a photo of Petitioner with his full name, and stating that he had been "arrested" for multiple serious crimes and that he had "criminal history." Ex. D at 014. Neither post mentioned that he had been cleared of the charges.

For the nearly two months, Petitioner has been unjustly separated from his family and community. He is the head of a household of five and the primary breadwinner. Ex. G at 025.

Petitioner and K.V. recently had a baby who was born in Provo, Utah and is a United States Citizen. *See* Son's Birth Certificate ("**Ex. I**") at 039. Since Petitioner's detention, K.V. has been forced to care for their three young children, including the five-month-old baby, on her own, while also maintaining full-time employment. *Id.* Ex. G. at 025.

## III. LEGAL STANDARDS FOR A TRO/PRELIMINARY INJUNCTION

Under Federal Rule of Civil Procedure 65, a court may grant a preliminary injunction to prevent "immediate and irreparable injury." Fed. R. Civ. P. 65(b). A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The standard for obtaining a TRO and a preliminary injunction is the same. *Quiroga v. Chen*, 735 F. Supp. 2d 1226, 1228 (D. Nev. 2010).

To obtain a TRO or preliminary injunction, a plaintiff must establish the following *Winter* factors: (1) a likelihood of success on the merits; (2) that the plaintiff will likely suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in its favor; and (4) that the public interest favors an injunction. *Winter, Inc.*, 555 U.S. at 22. When the government is the defendant, "the balance of the equities and public interest factors merge." *Id.* (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). Consequently, even if Plaintiff raises only "serious questions" as to the merits of his claims, the court can grant relief if the balance of hardships tips "sharply" in Plaintiff's favor, and the remaining equitable factors are satisfied. *All. for the Wild Rockies*, 632 F.3d at 1135.

This Court should grant Petitioner's application for a TRO, or in the alternative, a preliminary injunction, because the four factors concerning whether to grant a TRO or

preliminary injunction weigh heavily in Petitioner's favor. The most important factor—Petitioner's likelihood of success on the merits—is particularly strong due to well-settled precedent, statutory interpretation, and constitutional guarantees all favoring Petitioner.

## IV. ARGUMENT

### A. Petitioner is not required to exhaust administrative remedies before filing this habeas corpus petition.

As a threshold matter, Petitioner is permitted to file the instant habeas corpus petition. Neither 8 U.S.C. § 2241 nor any relevant provision of the INA requires the exhaustion of administrative remedies before filing such petition. *See Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004) (citing *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)). And while courts may require administrative exhaustion as a prudential matter, such discretion applies only when the following factors are met:

> (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision;
> (2) relaxation of this requirement would encourage the deliberate bypass of the administrative scheme; and
> (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

*Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Courts may waive administrative exhaustion if a petitioner demonstrates at least one of the following elements:

> (1) administrative remedies are inadequate or not efficacious;
> (2) the pursuit of administrative remedies would be a futile gesture;
> (3) irreparable injury will result; or
> (4) the administrative proceedings would be void.

*Laing*, 370 F. 3d at 1000; *see also Ortega-Rangel v. Sessions*, 313 F.Supp.3d 993, 1003 (9th Cir. 2018).

The waiver of administrative exhaustion in this case is appropriate. This Court recently granted such a waiver in an analogous case on September 17, 2025. *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, Order (D. Nev. September 17, 2025) (Boulware, J.). Here, the *Puga* factors weigh against requiring administrative exhaustion. ***First***, the legal questions raised—namely, the proper interpretation of §§ 1225 and 1226 of the INA, and the constitutionality of § 1226(c) as applied to Petitioner—are purely legal and require no agency expertise. Courts are primarily responsible for resolving such questions, not agencies. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024).

***Second***, there is no risk of bypassing agency procedures because Petitioner has no available relief in immigration court. The BIA has already adopted DHS' interpretation of the INA—which subjects those who enter without inspection (known as "EWIs") to mandatory detention under § 1225(b)—in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). As a result, IJs no longer have the authority to hold bond hearings for EWIs. *See* 8 C.F.R. § 1003.1(d) (describing the BIA's power to issue precedent decisions); 8 C.F.R. § 1003.10(d) ("[i]mmigration judges shall be governed by . . . the decisions of the Board"). Accordingly, Petitioner's only avenue for relief lies with this Court. Petitioner's constitutional claims fell beyond the scope of BIA's jurisdiction. *See Matter of G.K.*, 26 I&N Dec. 88, 96-97 (BIA 2013) (explaining that "[n]either the [BIA] nor the Immigration Judges have the authority to rule on the constitutionality of the statutes we administer[.]").The writ of habeas corpus is the appropriate

mechanism for challenging "constitutional claims or questions of law" related to conditions of immigration detention. *See Dep't of Homeland Sec. v. Thuraissigian*, 591 U.S. 103 (2020)

***Third***, administrative review would not result in the agency correcting its mistake, as the BIA has clearly established its position on the matter. *See Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) ("[w]e will excuse a failure to exhaust if it is very likely what [the BIA's] result would have been. Thus, where the agency's position appears already set and recourse to administrative remedies is very likely futile, exhaustion is not required.").

***Fourth***, for reasons that will be discussed in more detail, infra, he suffers irreparable harm through continued illegal detention without bond.

**B. Petitioner is likely to succeed on the merits.**

The likelihood of success factor is the most important factor in a preliminary injunction analysis and is especially important where a plaintiff seeks such relief due to an alleged constitutional violation. *Chamber of Comm.*, 62 F.4th at 481 (quoting *California ex rel. Becerra v. Azar*, 950 F.3d 1067, 1083 (9th Cir. 2020) (en banc)); *Baird v. Bonta*, 81 F. 4th, 1036 1042 (9th Cir. 2023).

Here, Petitioner challenges his detention on two grounds: (1) he is detained pursuant to § 1226, not § 1225, because he was already present in the United States and is therefore not an applicant for admission and thus entitled to a bond hearing; and (2) subjecting him to mandatory detention under § 1226(c) violates due process, as the basis for detention rests solely on charges for which he was acquitted.

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**1. First, Petitioner is subject to 8 U.S.C. § 1226, not § 1225, because DHS designated him as "present in the United States," rather than an applicant for admission at the border.**

The Immigration and Nationality Act ("INA"), codified at Title 8 of the United States Code, governs the detention of noncitizens in removal proceedings. *See* 8 U.S.C. § 1229a. There are two basic forms of detention: mandatory detention under §§ 1225(b)(1), 1225(b)(2), and 1226(c), and discretionary detention under § 1226(a). The first issue is whether Petitioner's detention is governed by § 1225 or § 1226.

Section 1225 applies only in two narrow circumstances: (1) where a noncitizen is subject to expedited removal under § 1225(b)(1); or (2) where, after inspection, an immigration officer determines that a noncitizen is an "applicant for admission" who is "not clearly and beyond a doubt entitled to be admitted." *See, e.g.*, *Benitez*, 2025 WL 2371588, at *5 (quoting *Martinez v. Hyde*, Civil Action No. 25-11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025)); 8 U.S.C. § 1225(b)(2)(A). The Supreme Court has made clear that this process "generally begins at the Nation's borders and ports of entry." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). By contrast, § 1226 governs the detention of noncitizens who are already "inside the United States" or "present in the country." *Id.* at 288–89.

After Congress enacted § 1225(b)(2) as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), the Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585; *See* Inspection and Expedited Removal of Aliens; Detention and Removal

of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Thus, in the decades that followed, most EWIs were placed in standard removal proceedings and received bond hearings, unless their criminal history rendered them ineligible. This practice was consistent with many more decades of practice, in which noncitizens who were not deemed "arriving" were entitled to a bond hearing before an IJ. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

Despite this longstanding practice, in July 2025, the DHS and DOJ adopted a new policy asserting that § 1226 does not apply to EWIs, and that such individuals must instead be detained under § 1225—rendering them categorically ineligible for bond. On September 5, 2025, the Board of Immigration Appeals (BIA) affirmed this broad interpretation in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This abrupt shift, however, reflects a clear misreading of the INA, as it departs from decades of agency practice, is contradicted by recent judicial interpretations of the relevant statutes, and undermines foundational principles of statutory construction.

**a. This Court, along with at least 20 district courts, have concluded that § 1226 applies to EWIs.**

On September 5, 2025, the District Court for the District of Nevada noted that "the decisions of federal district courts within the Ninth Circuit and across the country that have thus far considered and rejected DHS's *novel* interpretation of sections § 1225 and § 1226." *See Torralba v. Knight*, No. 2:25-v-01366-RFB-DJA, 2025 LX 396583, ECF 32 at 12 (D. Nev. Sept. 5, 2025) (*emphasis added*). And on September 17, 2025, this Court joined at least 20 other

district courts, with 9 being in the Ninth Circuit, in concluding that § 1226 applies to EWIs who are apprehended by ICE while present in the United States.[2] This Court reasoned that the plain

[2] *See Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, Order (D. Nev. September 17, 2025) (Boulware, D.J.); *see also Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025) (finding that § 1226, given established past interpretation and the agency's previous position, applied); *Ceja Gonzalez v. Noem*, No 5:25-cv-02054-ODW (C.D. Cal. Aug. 13, 2025) (rejecting the application of § 1225 based on the plain language of the statute); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *8 (D. Ariz. Aug. 11, 2025) (citing past interpretations by Immigration Judges that § 1226 applies); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (holding that the § 1225 argument disregards the "seeking admissions" language found within the section); *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025) (finding that DHS's argument for § 1225 would make the Laken Riley Act duplicative); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (holding that an immigrant who has resided in the US for two plus years is not governed by § 1225); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, Dkt. 14 (C.D. Cal. July 28, 2025) (granting temporary restraining order because § 1225 rather than section 1226 applies); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition because petitioner was not an alien "seeking admission" and therefore governed by § 1226); *Arrazola-Gonzalez v. Noem*, NO. 5:25-cv-01789, 2025 LX 342294 (C.D. Cal. Aug. 15, 2025) (granting IJs jurisdiction order because § 1226 applies to immigrants already within the U.S.); *Romero v. Hyde*, Civil Action No. 25-11631-BEM, 2025 LX 329730 (D. Mass. Aug. 19, 2025) (granting petition for writ of habeas corpus and ordering petitioner by granted a bond hearing under Section 1226, not § 1225, because the plain language is clear); *Francisco T. v. Bondi*, No. 25-CV-03219 (JMB/DTS), Dkt. 17 (D. Minn. August 29, 2025) (granting temporary restraining order because of the plain language of the statutes supports that § 1226 governs); *Kostak v. Trump*, No. 3:25-1093, 2025 LX 395222 (W.D. La. Aug. 27, 2025) (granting temporary restraining order and ordering bond hearing on the merits because § 1225 applies to aliens seeking entry into the United States while § 1226 applies to aliens already present in the United States); *Jose J.O.E. v. Bondi*, No. 25-cv-3051 (ECT/DJF), 2025LX 366449 (D. Minn. Aug. 27, 2025) (ordering a bond hearing on the merits under § 1226 because petitioner entered the US more than ten years ago); *Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 LX 390497 (S.D. Cal. Sep. 3, 2025) (granting temporary restraining order in part and ordering bond hearing within fourteen days because adopting the § 1225 argument would make the "seeking admission" element superfluous); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS, 2025 LX 322897 (C.D. Cal. Aug. 26, 2025) (ordering individualized bond hearing for each petitioner because if § 1225 applied, it would make § 1226(c)(1)(E) meaningless); *Hernandez Marcelo v. Trump et al.*, No. 3:25-cv-00094-RGE-WPK, Dkt. 38 (S.D. Iowa Sep. 10, 2025) (reading § 1225's "seeking admission" as a separate element from "applicant for admission" comports with the plain language, therefore, the petitioner falls under § 1226, and his preliminary injunction is granted in part to give him a bond hearing under 1226);

language of the statute, legislative history, and longstanding agency practice support this conclusion. *Id.*

***First***, the plain meaning of the statute, including its title which indicates that it concerns "inspection by immigration officers," and "expedited removal of inadmissible arriving aliens" indicates that § 1225 is limited in temporal scope, and applies only to "noncitizens entering, attempting to enter, or who have recently entered the U.S." *Id.* at *23.

***Second***, in enacting IIRIRA, Congress specified that § 1226(a) simply restated the discretionary detention authority applicable to all noncitizens *present* in the U.S. pending deportability proceedings, formerly codified at 8 U.S.C. § 1252(a) (1994). *Id.* at *26. Plus, Congress enacted IIRIRA under the backdrop that noncitizens who have never entered the country have less due process protections than those present in the U.S. *Id; see Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001) (collecting cases setting forth this longstanding distinction).

***Third***, the BIA's reading is undermined by the fact that it vests immensely broad detention authority in DHS—a shift of "vast economic and political significance"—while contradicting decades of agency practice. *Id.* at *27; See e.g., Util. Air Regul. Grp. V. EPA, 573 U.S. 302, 324 (2014) (When an agency claims to discover in a long-extant statute an unheralded

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*Jiminez v. FCI Berlin, Warden et al.*, NO. 25_cv-326-LM-AJ, Dkt. 16 (D.N.H. Sep. 8, 2025) (applying § 1226 to petitioner because they have been in the country for nearly two years pursuant to a grant of conditional parole under § 1226(a) and in accordance with the Supreme Court's interpretation of the two sections in *Jennings*); *Salcedo Aceros v. Polly Kaiser*, No. 3:25-cv-06924-EMC, Dkt. 23 (N.D. Cal. Sep. 12, 2025) (finding that the BIA ruling "lacks persuasive power" because it improperly characterizes people who have resided in the U.S. for years as "seeking admission"); *Cortes v. Noem*, No. 1:25-cv-02677-CNS, at *7–8. (D. Colo. September 17, 2025) (applying § 1226 to petitioner because he is not an individual "seeking admission" according to the Notice to Appear, and finding that due process principles weigh in favor of petitioner); *Choglo Chafla v. Scott, Comm'r of Customs & Border Prot., et al.*, No. 2:25-cv-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 21, 2025) (finding that three EWIs are subject to § 1226 because they have resided in the U.S. for years prior to their arrests).

power. . . [the courts] typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance.") (citations omitted).

Here, Petitioner's detention is governed by § 1226, not § 1225. In Petitioner's Notice to Appear, DHS already designated him as "an alien ***present in the United States*** who has not been admitted or paroled." Ex. E. at 017. This language is consistent with § 1226 detainees and EWIs detained before July 2025. The NTA does not designate him as "an arriving alien," further suggesting that he is entitled a bond hearing. Indeed, under the DHS and DOJ's current policies, EWIs are subject to § 1225.

**b. The rules of statutory interpretation demonstrate that § 1226, not § 1225 applies.**

Section 1226(a) states: "[a]n alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." It goes on to state that bond is available when a noncitizen is arrested under § 1226(a), ***except*** as provided in subsection (c). As the *Rodriguez Vazquez* court concluded, a plain reading of this exception implies that the default bond procedures in § 1226(a)—which allows discretionary release—apply to a noncitizen who is present without being admitted or paroled but has not been implicated in any of the crimes enumerated in subsection (c). 779 F. Supp. 3d at 1256.

While § 1226 governs immigration arrests inside the country, § 1225 addresses "[i]nspection of aliens ***arriving in the United States*** and certain other aliens who have not been admitted or paroled." 8 U.S.C. § 1225(b)(1). Thus, § 1225 "applies primarily to aliens seeking

entry into the United States," not those already here. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 11978 (9th Cir. 2022).

The dispute in this case is the text of § 1225(a)(1), which states that "an alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an ***applicant for admission***." 8 U.S.C. § 1225(a)(1). It goes on to state that "if the examining immigration officer determines that" an applicant for admission who is "not clearly and beyond a doubt entitled to be admitted, the alien shall be detained" without bond. 8 U.S.C. § 1225(b)(2)(A). The BIA's position depends on reading these statutory provisions entirely in isolation, but the Supreme Court requires statutes to be read to give meaning to ***all*** of its provisions. *See Corley v. United States*, 556 U.S. 303, 314 (2009).

This Court noted in its *Maldonado Vazquez v. Feeley* order that by its plain text, § 1225(b)(2) applies if (1) an "examining immigration officer" in the context of "inspection" (2) determines that an individual is an "***applicant for admission***" who is (3) "***seeking admission***." *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY at *22. But the BIA's reading erroneously conflates the phrases "applicant for admission" and "seeking admission," effectively ignoring the latter phrase altogether. *Id.* at *23. When taken together, the phrases suggest a temporal scope that is dependent on where and how recent entry into the U.S. occurred. *Id.*

This Court also cited various Supreme Court precedent interpreting § 1225(b) and finding that it "applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Jennings*, 583 U.S. at 297. Therefore, a noncitizen who has already entered and is present in the country cannot be characterized as "seeking entry" consistent with the ordinary meaning of that phrase. *See Dept. of Homeland Sec. v.*

*Thuraissigiam*, 591 U.S. 103, 140 (2020) (finding "an alien who tries to enter the country illegally is treated as an 'applicant for admission,'" under § 1225(a)(1)).

Moreover, the BIA's reading of § 1225 as applying only to arriving or recently arriving noncitizens is further supported when considered in comparison to § 1226. The *Rodriguez Vazquez* court emphasized that the most fundamental, fatal flaw in Respondents' position is that by reading § 1225 so expansively, much of § 1226 would be rendered irrelevant. *See Rodriguez Vazquez*, 2025 WL 1193850 at 26–27. Section 1226 is dedicated to carving out exceptions from bond eligibility for those with certain criminal records. 8 U.S.C. § 1226. This is also the import of the recent Laken Riley Act, which adds to § 1226 a new category of individuals who are ineligible for bond. 8 U.S.C. § 1226(c). But § 1226 and the LRA would be redundant and meaningless if every person who was not admitted or paroled were ineligible for bond under § 1225 anyways, as the DHS and DOJ suggest.

The appropriate interpretation of these provisions is that § 1226 is the default rule for noncitizens apprehended while present in the United States, including EWIs, unless the noncitizen is specifically excluded under § 1226(c) due to a criminal conviction. Thus, § 1226 detainees are generally eligible for release on bond. By contrast, § 1225 generally applies to applicants seeking admission into the United States from the border.

**c. If statutory ambiguity exists, interpretation must be construed in favor of Petitioner and judicial review.**

To the extent that statutory ambiguity exists, the rule of lenity requires this Court to construe the statute in favor of Petitioner's liberty as a matter of constitutional due process. This rule states: "any reasonable doubt about the application of a penal law must be resolved in the

favor of liberty," *Wooden v. United States*, 595 U.S. 360, 388 (2022) (Kavanaugh, J., concurring). This rule extends to the immigration context, as the Supreme Court has recognized that the rule of lenity applies when physical liberty is at stake. *See Clark v. Martinez*, 543 U.S. 371, 380 (2005) (quoting *Leocal v. Ashcroft*, 543 U.S. 1, 11-12 n. 8 (2004)). Further, in evaluating the jurisdiction provisions of the INA, this Court is guided "by the general rule to resolve any ambiguities in a jurisdiction stripping statute in favor of the narrower interpretation and by the strong presumption in favor of judicial review." *Arce v. United States*, 899 F. 3d 796, 801 (9th Cir. 2018) (*per curiam*) (internal quotations and citations omitted).

**2. Second, Petitioner is eligible to apply for bond under § 1226(a) because § 1226(c) as-applied to his case would be a due process violation.**

Establishing that Petitioner falls under § 1226 instead of § 1225, the next issue is whether Petitioner is subject to discretionary detention under § 1226(a) or mandatory detention under § 1226(c). The Fifth Amendment's Due Process Clause specifically forbids the Government to deprive any person of liberty without due process of law. U.S. Const. amend. V; *Reno v. Flores*, 507 U.S. 292, 306 (1993). The Supreme Court has consistently held that due process applies regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[o]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent"). In accordance with due process, noncitizens detained under § 1226(a) have the right to a bond hearing before an IJ at which the government bears the burden of proving by clear and convincing evidence that the noncitizen is dangerous or a flight risk in

order to justify continued detention. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27, 41 (1st Cir. 2021); *see also* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

By contrast, § 1226(c) detainees are ineligible for bond hearings. *Demore v. Kim*, 538 U.S. 510, 513 (2003). Congress enacted most of this provision in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to address concerns that criminal noncitizens frequently failed to appear at their removal proceedings. *See Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020). Relying on legislative findings that individuals with certain convictions posed elevated risks of danger and flight, Congress mandated detention for those convicted of specific, enumerated crimes, like aggravated felonies, drug trafficking, and crimes involving moral turpitude. *Demore*, 538 U.S. at 518–20. In such cases, the Supreme Court has found that detention without a bond hearing is justified "for the brief period necessary for [the noncitizen's] removal proceedings." *Id.* at 513. Further, the Supreme Court has ruled this does not violate due process because such detention "serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings. . .." *Id.*

The part of § 1226(c) that pertains to Petitioner was enacted this year in the Laken Riley Act. Through the LRA, Congress amended the INA to add a new category of noncitizens subject to mandatory detention. Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). Under the new provision, codified at § 1226(c)(1)(E), detention is required if "the noncitizen is charged with, arrested for, or convicted of acts which constitute the essential elements of burglary, theft, larceny, and shoplifting." *Id.* Unlike the IIRIRA amendments, however, the LRA provides no exception for mistaken arrests, dismissed charges, or acquittals. *Id.* Nor did Congress cite data linking arrests or charges for these offenses with higher risks of flight or danger.

8 U.S.C. § 1226(c)(1)(E) (emphasis added).

The due process problem in this case is clear: Petitioner was arrested and charged with robbery under Utah Code § 76-6-301, a crime that includes the essential elements of theft or larceny and thus on its face triggers mandatory detention by the LRA. However, he was fully acquitted by a jury and declared not guilty of those charges. It is therefore constitutionally impermissible to use an alleged crime of which he was acquitted as the basis for his detention.

Under constitutional prohibitions against double jeopardy, States may not repeatedly attempt to convict defendants. *Green v. U.S.*, 355 U.S. 184, 188 (1957). The Supreme Court has recognized that permitting a second trial after an acquittal would present an unacceptably high risk that the government, with its vastly superior resources, might wear down the defendant, so that "even though innocent, he may be found guilty." *Id.* Further, it would subject innocent individuals to continued embarrassment, anxiety, and insecurity. *Id.* In line with this principle, the law "attaches particular significance to an acquittal." *United States v. Scott*, 437 U.S. 82, 91 (1978). Courts have repeatedly held that the verdict of acquittal is final. *Fong Foo v. United States*, 369 U.S. 141, 143 (1962).

Although the instant case involves immigration proceedings rather than a second criminal prosecution, Petitioner is nonetheless being subjected to additional proceedings arising from the very charges that have already been resolved in his favor. More directly, his liberty is being taken away based on charges which he contested in court, and from which he was cleared. To deprive him of the benefits of a favorable result in the criminal justice process is a clear violation of due process.

In an analogous case, the District Court for the District of Massachusetts considered the constitutionality of the LRA as applied to a noncitizen ("Doe") for an uncharged shoplifting arrest. *John Doe v. Antone Moniz*, No. 1:25-cv-12094-IT, Mem. & Order (D. Mass. Sept. 5, 2025) (Talwani, D.J.)[3]. The court in *John Doe* reached this conclusion by relying on the well-established *Mathews v. Eldridge* factors to assess procedural due process 424 U.S. at 335 (private interest, risk of erroneous deprivation, government interest). The court found that all factors weighed in favor of finding a due process violation and therefore ordered that the Immigration Court provide him a bond hearing. *John Doe v. Antone Moniz*, No. 1:25-cv-12094-IT, at *21.

An individual's private interest in being free from physical restraint is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (stating that freedom from imprisonment lies at the heart of the liberty that the Clause protects). In this country, liberty is the norm and detention "is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Given that individuals have a fundamental interest in freedom from detention, any deprivation of liberty requires substantial justification. *Jones v. United States*, 463 U.S. 354, 361 (1983). The Supreme Court has recognized that detention of noncitizens pending removal proceedings is permissible only for the limited purposes of preventing flight and protecting the community. *Zadvydas*, 533 U.S. at 690. Where detention does not serve these purposes, it is unjustified.

[3] *Available at* https://www.aclum.org/sites/default/files/2025.09.05_-_dkt_62_-_doe_mem_order.pdf

Here, Petitioner's detention under § 1226(c) poses a substantial risk of erroneous deprivation, because his detention would be based on charges for which he was found not guilty. This is definitively an erroneous deprivation of liberty, not a mere risk of error.

Respondent would not suffer any undue burden by providing Petitioner the bond hearing to which he is entitled. On the contrary, requiring such a hearing ensures that Respondent fulfills legitimate governmental interests. Courts have recognized that the public has no interest in the detention without bond of an individual who faces no criminal charges and who is an active, contributing member of his community. *Doe*, 2025 WL 2576819, at *11. By affording Petitioner the opportunity to demonstrate that he poses neither a danger nor a flight risk, Respondent can confirm whether continued detention is warranted while also conserving resources over the long term. *See Hernandez*, 872 F.3d at 996 (noting in 2017 that "the costs to the public of immigration detention are staggering: $158 each day per detainee, amounting to a total daily cost of $6.5 million. Supervised release programs cost much less by comparison: between 17 cents and 17 dollars each day per person[.]").

While providing a bond hearing poses no burden to Respondent, the denial of a bond hearing imposes a substantial burden on Petitioner. He has already endured three months of incarceration, during which he has been separated from his family, unable to provide for them as their primary financial supporter, and limited in his ability to pursue his asylum claim due to lack of access to resources.

**C. <u>Petitioner will suffer irreparable harm without a TRO.</u>**

The Ninth Circuit has held that a petitioner at risk of continuing immigration detention has demonstrated irreparable harm. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir.

2013). Here, Petitioner and his family will suffer irreparable harm if this Court does not intervene. Petitioner's detention prohibits him from helping his fiancée, who recently gave birth to their infant son and suffers from post-partum symptoms, with expenses, childcare, and household duties. Further, Petitioner's detention causes substantial financial harm since he is the primary breadwinner for his family and has been unable to work for the past three months.

**D. The balance of equities and the public interest favors a TRO.**

The balance of equities weighs heavily in favor of granting Petitioner's request for a TRO. Petitioner faces significant disadvantages, including his lengthy detention, lack of access to resources, and undocumented status. By contrast, Respondents possess substantial institutional resources. Respondent ICE's public statements smearing Petitioner as the "worst of the worst" based on criminal charges for which he was cleared should be taken into account in calculating the balance of equities in this case. Respondents have not acted in good faith toward Petitioner, nor in a manner befitting a government committed to respect for legal procedures. They have publicly acted as if a unanimous jury verdict is irrelevant. Further, the public interest will not be harmed by ordering the government to follow the same policies it has been complying with since 1997. Without action by this court, an illegal detention would be allowed to persist without a judicial remedy. This is not in the public interest.

**E. This Court should not require Petitioner to provide security before the TRO.**

Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damage sustained by any party found to have been wrongfully enjoined or restrained." However, district courts exercise discretion in cases brought

by indigent and/or incarcerated people, and in the vindication of immigrants' rights. *See e.g., Ashland v. Cooper*, 863 F.2d 691, 693 (9th Cir. 1988); *P.J.E.S. by & through Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 520 (D.D.C. 2020). Additionally, courts "may dispense with the filing of a bond when," as here, "there is no realistic likelihood of harm to the defendant from enjoining his or her conduct," *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003), or plaintiff shows a high likelihood of success on the merits. *See, e.g., People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Plan. Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985), *amended*, 775 F.2d 998 (9th Cir. 1985).

Here, this Court should exercise its discretion to waive the security requirement because Petitioner is financially burdened due to his inability to work for three months as a result of incarceration. He is also the primary provider for his family of five, which includes two young children and a five-month-old baby. Given Petitioner's circumstances, this Court should waive the security requirement.

## CONCLUSION

The Court should grant Petitioner's motion for a temporary restraining order, or alternatively, a preliminary injunction, to order a bond hearing within seven days or the immediate release of Petitioner from ICE detention.

DATED this 22nd day of September, 2025.

Respectfully Submitted,

/s/Michael Kagan
Michael Kagan
Nevada Bar. No. 12318C

/s/Drianna Dimatulac
Drianna Dimatulac

Student Attorney Practicing
Under Nevada Supreme Court Rule 49.3

/s/Yilu Song
Yilu Song
Student Attorney Practicing
Under Nevada Supreme Court Rule 49.3

**UNLV IMMIGRATION CLINIC**
Thomas & Mack Legal Clinic
William S. Boyd School of Law
University of Nevada, Las Vegas
P.O. Box 71075
Las Vegas, Nevada 89170
Telephone: 702-895-3000
Facsimile: 702-895-2081

## EXHIBIT LIST

| Exhibit | Document | Page |
|---|---|---|
| A | Declaration of Petitioner | 001–005 |
| B | Jury Verdict Form | 006–008 |
| C | ICE, "Worst of the Worst" | 009–013 |
| D | ICE Salt Lake City Tweet | 014–015 |
| E | Notice to Appear | 016–018 |
| F | I-589 Application for Asylum | 019–02 |
| G | Declaration of K.V. | 023–025 |
| H | Minutes Showing Not Guilty Verdicts on All Counts | 026–038 |
| I | Son's Birth Certificate | 039–042 |