UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-03062-NRN

JAVIER DE DOMINGO CAMPOS,
Petitioner-Plaintiff
v.
JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
ROBERT GAUDIAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,
TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity,
PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,
Respondents

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Petitioner-Plaintiff Campos Ceballos ("Petitioner") moves for a temporary restraining order and preliminary injunction against Respondents-Defendants ("Respondents") pursuant to Rule 65 of the Federal Rules of Civil Procedure and the All Writs Act.

Defendants unlawfully jail Petitioner at Immigration and Customs Enforcement's ("ICE") Denver Contract Detention Facility in Aurora, Colorado. On August 14, 2025, after a bond hearing, an Immigration Judge ("IJ") granted Petitioner release on a $10,000 bond, finding that he is neither a risk of flight nor a danger to the community. Nevertheless, Respondents refused to release him, invoking the "automatic stay" regulation at 8 C.F.R. § 1003.19(i)(2). ICE is now jailer and judge.

Petitioner's detention is unlawful. First, courts overwhelmingly agree that ICE's authority to jail Petitioner is under 8 U.S.C. § 1226(a), not § 1225(b)(2). Defendants deny Petitioner release on bond under their erroneous, new interpretation of the Immigration and Nationality Act ("INA").

Second, the automatic stay regulation violates Petitioner's procedural and substantive due process rights by nullifying the IJ's individualized bond determination. Third, Defendants' reliance on the automatic stay exceeds their statutory authority.

Accordingly, the Court should enjoin Respondents from enforcing the automatic stay regulation against Petitioner and order his immediate release upon the posting of the $10,000 IJ-issued bond. The Court should further enjoin Respondents from transferring Petitioner outside this Court's jurisdiction while this action is pending.

I. Introduction

For nearly thirty years noncitizens that entered the country without inspection and who Defendants later detained for removal proceedings were bond eligible. Defendants' radical change in course violates the statute. 8 U.S.C. § 1226 provides noncitizens "arrested and detained" during removal proceedings "may [be] release[d] on a bond …" absent certain criminal charges. 8 U.S.C. § 1226(a)(2), (c). The Supreme Court explained § 1226 is the "default" detention provision, authorizing the incarceration of people "already in the country," distinguishing them from "[noncitizens] seeking admission into the country" who "shall" be detained under § 1225. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Defendants now insist that 8 U.S.C. § 1225 governs Plaintiff's detention.

Under Defendants' new theory, despite having lived in the country for nearly two decades, Plaintiff is now "seeking admission" to the U.S. and thus subject to mandatory detention under § 1225(b)(2) because Defendants charge him as removable under 8 U.S.C. § 1182(a)(2)(6)(A)(i).[1] This is a sharp contrast to Defendants' decades-long practice where § 1225 applied only "at the Nation's borders and ports of entry." *Jennings*, 583 U.S. at 287. It is also wrong; Federal courts

[1] Plaintiff Ex. 1, Notice to Appear

overwhelmingly agree.[2] "The language of … § 1226 is … clear[]. … [it] applies to [noncitizens] already present in the [U.S.] … [And] permits … release on bond." Jennings, 583 U.S. at 303.

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[2] *Rodriguez-Vazquez v. Bostock*, No. 779 F.Supp.3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, *8 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.3d ---, 2025 WL 2084238, *9 (D. Mass. July 24, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025); *Escalante v. Bondi*, No. 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025) (adopted *sub nom O.E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025)); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D. N.Y. Aug. 8, 2025); *de Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (adopted without objection at 2025 WL 2349133 (D. Ariz. Aug. 13, 2025)); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Aquilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug 15, 2025); *Romero v. Hyde*, --- F.Supp.3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, Doc. 20 (D. Md. Aug. 24, 2025); *Benitez v. Noem*, No. 5:25-cv-02190, Doc. 11 (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump*, No. 3:25-dcv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, --- F.Supp.3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, --- F.Supp.3d --- , 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Palma Perez v. Berg*, --- F.Supp.3d --- , 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, No. 25-cv-02180-DMSMMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Doe v. Moniz*, No. 1:25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Sampiao v. Hyde*, --- F.Supp.3d ---, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizzaro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256, (E.D. Cal. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025; *Jimenez v. FCI Berlin, Warden et al.*, --- F.Supp.3d ---, 2025 WL 2639390 (D.N.H. Sept. 9, 2025); *Salcedo Aceros v. Kaiser et al.*, No 25-cv-06924-EMC (EMC), 2025 WL 2637503 (N.D. Ca. Sept. 12, 2025). *Garcia Cortes v. Noem et al.*, No. 1:25-cv-02677- CNS, 2025 WL 2652880 (D. of Colo. Sept. 16, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Maldonado-Vazquez v. Freeley*, 2025 WL 2676082 (D. Nev. Sept 17, 2025); *Hassan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran-Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Campos-Leon v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept 22, 2025); *Chafla et al. v. Scott, et al.*, 2:25-cv-00437-SDN, 2025 WL 2688541 (D. of Maine Sept. 21, 2025); *Campos-Leon v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept 22, 2025); *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, --- F.Supp.3d ---, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Rivera Zuma v. Bondi, et.al.*, No. 25-cv-14626 (KSH) (D. NJ. Sept. 26, 2025); *Flores v. Noem et. al.*, 5:25-cv-02490-AB-AJR (C.D.Ca. Sept. 29, 2025); *Alves da Silva*, 25-cv-284-LM-TSM (D.NH Sept. 29, 2025).

Compounding this statutory error, Defendants invoke the "automatic stay" regulation, 8 C.F.R. § 1003.19(i)(2), to nullify the IJ's individualized bond determination. After an evidentiary hearing, the IJ found Plaintiff neither a flight risk nor a danger and ordered release on a $10,000 bond.[3]

Yet the automatic stay empowers the Department of Homeland Security ("DHS") to unilaterally override the IJ's ruling. Courts recognize that this procedure "renders the Immigration Judge's bail determination an empty gesture" and "creates a patently unfair situation" by shifting adjudicatory power to the prosecutor. *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1188 (D. Minn. 2025).

The stay provision unlawfully prolongs detention, automatically extending incarceration at least 90 days during BIA review and potentially longer via extensions or AG referral. *See* 8 C.F.R. §§ 1003.6(c)(4)–(5), 1003.6(d). Unlike an IJ's bond order, it requires no individualized findings or limits on DHS' discretion. *See Günaydin*, 784 F. Supp. 3d at 1187. Courts have repeatedly rejected DHS' use of the automatic stay in this manner.[4]

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[3] Plaintiff Ex. 2, Written Decision and Order of the Immigration Judge.

[4] *See e.g.*, *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Carlon v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Sampiao v. Hyde*, 2025 WL 2607924; *Martinez v. Secretary of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Herrera Torralba v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521; *Fernandez v. Lyons*, 2025 WL 2531539; *Perez v. Berg*, 2025 WL 2531566; *Leal-Hernandez v. Noem*, 2025 WL 2430025; *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Mohammed H. v. Trump*, No. CV 25-1576, 2025 WL 1692739, at *5–6 (D. Minn. June 17, 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175; *Quizpe-Ardiles et al. v. Noem, et al.*, 1:25-cv-01382-MSN-WEF (E.D.Va. Sept. 30, 2025).

II. Factual Background

a. Immigration Detention's Legal Framework

This case concerns two provisions of the INA: 8 U.S.C. § 1226(a) and § 1225(b). The distinction determines whether a noncitizen can be released on bond or is subject to mandatory detention. Noncitizens subject to § 1226(a) face discretionary detention. *See* 8 U.S.C. § 1226(a)(1). These noncitizens can seek a "custody redetermination," i.e., a bond hearing, before an immigration judge (IJ) to present evidence that they are neither a flight risk nor a danger. *Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006). By contrast, people detained under § 1225(b) are subject to mandatory detention. *See Jennings*, 583 U.S. at 288; 8 U.S.C. § 1182(d)(5).

These two provisions reflect immigration law's distinction between noncitizens arrested after entering the country (§ 1226) and those arrested while arriving in the country (§ 1225). Prior to 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), the statutory authority for custody was 8 U.S.C. § 1252(a) (1994), authorizing detention during "deportation" proceedings and release on bond. Those "deportation" proceedings governed the detention of anyone in the United States, regardless of manner of entry. IIRIRA maintained that authority for detention and release on bond at 8 U.S.C. § 1226(a). *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining the new § 1226(a) "restate[d] the current provisions in [then 8 U.S.C. § 1252(a)] regarding the authority … to … detain, and release on bond…"). The IIRIRA also enacted new mandatory detention (without bond) provisions for people apprehended on arrival at 8 U.S.C. § 1225. *See Jennings*, 583 U.S. at 303.

In implementing the IIRIRA's detention authority, the then-INS clarified that people entering the U.S. without inspection and who were not apprehended while "arriving" would continue to be detained under § 1226(a) (formerly § 1252(a)) with access to bond. 62 Fed. Reg.

10312, 10323 (Mar. 6, 1997) ("Inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond … This procedure maintains the status quo.")

b. Defendant's New Illegal Mandatory Detention Policy

Since IIRIRA's passage, Defendants applied § 1226(a) to people arrested in the interior after entry without inspection. Defendants switched course and insist that § 1225(b)(2)(A) requires detention of all persons who entered the U.S. without inspection, regardless of where they were arrested or how long they have resided in the country. The change began at the Tacoma Immigration Court where IJs began denying bond to those who entered without inspection. *See Rodriguez-Vazquez*, 779 F. Supp. at 1244. Then, on May 22, 2025, the BIA issued an unpublished decision affirming one Tacoma IJ's decision denying bond pursuant to § 1225(b)(2)(A).

After the unpublished BIA decision, in July 2025, DHS "in coordination with the [DOJ]" issued a memo stating "effective immediately, it is the position of DHS " that anyone who entered without inspection is "subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE custody … ." According to DHS, noncitizens are now "ineligible for a [bond] hearing … and may not be released" during removal proceedings.[5] The BIA published a precedential decision finding the same on September 5, 2025. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). IJs at the Aurora Facility are now required to adopt this illegal interpretation of the INA's detention scheme. *Id.*

c. Defendant's Invocation of the Automatic Stay Regulation

After a neutral IJ granted bond under § 1226(a), Defendants used the automatic stay to unilaterally block Petitioner's release for ten days while deciding whether to appeal. On August

[5] Plaintiff Ex. 3, "Interim Guidance Regarding Detention Authority for Applicants for Admission."

14, 2025, the very day the IJ granted Petitioner release on a $10,000 bond, DHS invoked the automatic stay to immediately prevent his release. On August 27, 2025, DHS filed a notice of appeal with the BIA thereby triggering the extended automatic stay under 8 C.F.R. § 1003.6(c). This extension allows DHS to prolong detention for 90 days while the appeal is pending, with potential further extensions and referrals to the AG. *See* 8 C.F.R. §§ 1003.6(c)(4)–(5), (d); *Sampiao v. Hyde*, 2025 WL 2607924, at *3–4. Thus, Petitioner remains detained not because he poses a danger or flight risk, but solely because DHS erroneously posits his detention is governed by § 1225(b)(2)(A). The regulation nullifies the IJ's individualized, evidence-based determination, prolongs detention, and deprives Petitioner of liberty without due process. *See Günaydın*, 784 F. Supp. 3d at 1187.

III. Legal Standard for Granting Preliminary Relief

Plaintiff shows he is entitled to preliminary relief as (1) he is likely to succeed on the merits; (2) he will suffer irreparable harm absent preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1255 (10th Cir. 2003).

IV. Legal Argument- The Court Should Order Preliminary Relief

A. Petitioner is Likely to Succeed on the Merits

Defendants' policy violates the INA. As the Supreme Court explained, § 1225 is concerned "primarily [with those] seeking entry," i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 297 & 287. In contrast, § 1226 applies to people who, like Plaintiff, are "already in the country" and are detained "pending the outcome of removal proceedings." *Id.* at 289. The INA's plain text, canons of statutory construction, the statutes'

legislative history, the implementing regulations, and decades of agency practice all support this conclusion. The Federal Courts agree. *Supra* n. 1

The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), compounds the statutory violation by allowing DHS to strip Plaintiff of his liberty based on its unlawful statutory construction of § 1225(b). This practice violates procedural due process under the Fifth Amendment; the *Mathews v. Eldridge*, factors strongly favor Plaintiff: the private interest in liberty is fundamental, the risk of erroneous deprivation is extreme, and the government's interest is minimal and already protected by existing discretionary stay procedures. 424 U.S. 319 (1976); *see also Herrera Torralba*, 2025 WL 2581792; *Sampiao*, 2025 WL 2607924. It also violates substantive due process because detention under the automatic stay is arbitrary, punitive, and lacks special justification sufficient to override the core liberty interest. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Leal-Hernandez*, 2025 WL 2430025, at *13; *Herrera Torralba v. Knight*, 2025 WL 2581792, at *13. Finally, the automatic stay is ultra vires: Congress vested bond-and-detention authority in the AG, who may delegate to DOJ officers and IJs, but DHS—an agency outside the DOJ—has no statutory authority to override these determinations, and § 1003.19(i)(2) unlawfully nullifies IJ discretion. 8 U.S.C. §§ 1226(a), 1101(b)(4); 28 U.S.C. § 510; *Zavala v. Ridge*, 310 F. Supp. 2d at 1079; *Leal-Hernandez*, 2025 WL 2430025; No. 4:25-cv-03158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025). The Federal courts agree. *Supra* fn. 2.

1. Defendants' Policy Violates the INA

a. The text of § 1226(a) and canons of statutory construction demonstrate Plaintiff is entitled to a bond hearing.

Application of § 1226(a) does not turn on whether a person was previously admitted to the country. The plain text of 8 U.S.C. § 1226(a) includes people who entered the United States without inspection. 8 U.S.C. § 1226(c)(1)(A), (D), (E). Section 1226(a), the INA's "default" detention

authority, *Jennings*, 583 U.S. at 281, applies to people detained "pending a decision on whether the [noncitizen] is to be removed," 8 U.S.C. § 1226(a). As the statute provides, this language includes both (1) people like Petitioner who entered without inspection, were never formally admitted to the country, and thus are charged as "inadmissible" under § 1182(a)(6)(A)(i), and (2) people who were admitted and are charged as "deportable." *See id.* § 1229a(a)(3) (removal proceedings "determine[e] whether a [noncitizen] may be admitted to the [U.S.] or, if the [noncitizen] has been so admitted, removed from the [U.S.]") (emphasis added).

The statute's structure makes this clear. Subsection 1226(a) provides the right to bond. Subsection 1226(c) then carves out discrete categories of noncitizens subject to mandatory detention due to criminal contacts. *See, e.g., id.* § 1226(c)(1)(A), (D), (E). These carve-outs include noncitizens inadmissible for entering without inspection and who meet certain crime-related criteria. *See id.* § 1226(c)(1)(E). Because § 1226(c)'s exception expressly applies to people who entered without inspection, it reinforces the default rule: § 1226(a)'s general detention authority otherwise applies to Plaintiff. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). Recent statutory amendments do the same.

Congress made significant changes to § 1226 in January 2025. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (LRA). These amendments make people charged under § 1182(a)(6)(A)(i) for entering without inspection or (a)(7) for lacking valid documentation and who have had certain criminal encounters subject to mandatory detention under § 1226(c). 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress reaffirmed that § 1226(a) covers persons charged under § 1182(a)(6)(A) or (a)(7). "[W]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F.Supp.3d at 1256-57 (quoting *Shady Grove*, 559 U.S. at 400).

Several canons of interpretation reinforce this understanding. First, is the canon against rendering statutory language superfluous. *See, e.g., Clark v. Rameker*, 573 U.S. 122, 131 (2014) ("a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous," internal citations omitted). Defendants' position does just that. As the *Rodriguez Vazquez* court explained, this is so because if "Section 1225 … and its mandatory detention provisions apply to all noncitizens who have not been admitted, then it would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens." *Rodriguez Vazquez*, 779 F.Supp.3d at 1258 (citation modified).

Second, "when Congress amends legislation, courts must presume it intends the change to have real and substantial effect." *Estrada v. Smart*, 107 F.4th 1254, 1268 (10th Cir. 2024) (cleaned up). That presumption applies here, given LRA's amendments to § 1226. *See Rodriguez Vazquez*, 779 F.Supp.3d at 1259 (quoting *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995)). LRA's amendments explicitly provide that § 1226(a) covers people like Plaintiff. This is 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." *Id.* 1259 (emphasis in original, citation modified). *See also, e.g., Diaz Martinez*, 2025 WL 2084238, at *7 ("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 [LRA] amendment would have no effect").

Finally, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction," courts "generally presume[] the new provision should have been understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (citation modified). This canon also supports Plaintiff's position because

"Congress adopted the new amendments to Section 1226(c) against the backdrop of decades of post-IIRIRA agency practice applying discretionary detention under Section 1226(a) to inadmissible noncitizens such as [Plaintiffs]." *Rodriguez Vazquez*, 779 F.Supp.3d, at 1259.

b. The statutory structure of § 1225(b)(2), the textual limitations of § 1225(b)(2), and canon against superfluity further demonstrate that § 1226(a), not § 1225(b)(2), applies to Plaintiff.

Section § 1225's structure also supports § 1226(a) applying to Plaintiff. "In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted); *see also Biden v. Tex.*, 597 U.S. 785, 799-800 (2022) (interpreting INA).

The Supreme Court has described the structure of § 1226 and § 1225 as distinguishing between the two basic groups of noncitizens. Section 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289. By contrast, § 1225(b)(2) mandatory detention 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." *Id.* at 287. The whole purpose of § 1225 is to define how DHS inspects, processes, and detains people at the border. *See id.* at 297 ("[Section] 1225(b) applies primarily to [noncitizens] seeking entry into the [U.S.] …"). *See also* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29 (explaining the purpose of § 1225).

Section 1225's text reinforces its limited temporal scope. To begin, § 1225 concerns the "inspection" and "expedited removal of inadmissible arriving [noncitizens]." 8 U.S.C. § 1225. For example, § 1225(b)(1) encompasses only "inspection" of certain "arriving" noncitizens, and only those who are "inadmissible" for having misrepresented information or lacking entry documents.

Section 1225(b)(2) is similarly limited to people applying for admission on arrival, but whom (b)(1) does not cover. The title explains that it addresses "[i]nspection of other [noncitizens]." The subsection further specifies it applies only to "applicants for admission" (defined at § 1225(a)(1)) who "seek[] admission." By stating § 1225(b)(2) applies only to those "seeking admission," Congress confirmed it did not intend to sweep up those who previously entered and began residing in the United States. A commonsense example clarifies the point:

> [S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not describe them as 'seeking admission' (or 'seeking' 'lawful entry') at that point – one would say they had entered unlawfully but now seek a lawful means of remaining there.

Lopez Benitez, 2025 WL 2267803, *7; *See also* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29; H.R. Rep. No. 104-828, at 209. *Diaz Martinez*, 2025 WL 2084238, at **6-7 (emphasis in original); *see also Lopez Benitez*, 2025 WL 2267803, at *7 (this is the "plain, ordinary meaning" of "seeking admission"). "This active construction of the phrase 'seeking admission'" accords with the plain language in § 1225(b)(2)(A) by requiring that a person be an "applicant for admission" and "also [be] *doing* something" to obtain authorized entry. *Diaz Martinez*, 2025 WL 2084238, at **6-7 (emphasis in original). The statute's temporal focus on people "arriving" is evident in other respects too. Section 1225(b)(2)(C) addresses "[t]reatment of [noncitizens] *arriving* from contiguous territory" (emphases added). Section § 1225's focus is on people entering the U.S.

Defendants reading of § 1225 would also render significant portions of § 1225 meaningless. Several requirements must be met for § 1225(b)(2)'s mandatory detention regime to apply; namely, (1) an "examining immigration officer" (2) must conclude during

an "inspection" (3) of an "applicant for admission" (4) who is also "seeking admission" (5) that the person "is not clearly and beyond a doubt entitled to be admitted." § 1225(b)(2)(A). Defendants' interpretation of § 1225 reads out three of those five requirements.

First, it makes superfluous the requirements that the "examining immigration officer" conduct an "inspection." *Jimenez*, 2025 WL 2639390 at *7. "[E]xamination is not an unbound concept. Rather, it is the specific legal process one undergoes while trying to enter the country." *Id.* (citations omitted). The regulations make that plain. 8 C.F.R. § 235.1(a) (noting that "scope of examination" occurs while on seeks to "enter the United States" "at a U.S. port-of-entry . . ."). Nor is the inspection requirement untethered to entry to the United States. See 8 U.S.C. § 1225(a)(3) ("All [noncitizens] who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers") (emphasis added). Defendants' interpretation renders both the examination officer and inspection requirements superfluous.

Second, it renders superfluous §1225(b)(2)(A)'s requirement that the noncitizen be "seeking admission." *Jimenez*, 2025 WL 2639390, at *8. The statute defines admission to mean "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). "While an applicant for admission has not been 'admitted' to the United States, it does not follow that an applicant for admission continues to be actively seeking . . . lawful entry." *Jimenez*, 2025 WL 2639390, at *8 (citation omitted). "If as the Government argues, all applicants for admission are deemed to be 'seeking admission' for as long as they remain applicants, then the phrase 'seeking admission' would add nothing to the provision" in §

1225(b)(2)(A). *Salcedo Aceros*, 2025 WL 2637503, at *10. Defendants' position would similarly "read the word 'entry' out of the definitions of 'admitted' and 'admission.'" *Chafla*, 2025 WL 2688541, at *6.

The implementing regulation for § 1225(b) supports Plaintiff's reading, noting that §1225(b) applies to "any arriving [noncitizen] who appears to the inspection officer to be inadmissible." 8 C.F.R. § 235.3 (emphasis added). "The regulation thus contemplates that 'applicants seeking admission' are a subset of applicants 'roughly interchangeable' with "arriving [noncitizens]." *Salcedo Aceros*, 2025 WL 2637503, at *10 (quoting *Martinez*, 2025 WL 2084238, at *6); *See* 8 C.F.R. § 1.2 (defining an arriving noncitizen as an applicant for admission "coming or attempting to come into the United States at a port-of-entry"). While Petitioner is not lawfully admitted, he is not actively "seeking admission i.e., seeking lawful entry . . . into the United States after inspection and authorization by an immigration officer." *Jimenez*, 2025 WL 2639390, *8. Defendants' reading of the statute is incorrect.

c. The legislative history further supports Plaintiff's argument.

IIRIRA's legislative history also supports the conclusion that § 1226(a) applies to Plaintiff. In the IIRIRA, Congress focused on recent arrivals who lacked documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29. Notably, Congress said nothing about subjecting all people present in the U.S. to mandatory detention.

Before the IIRIRA, people like Plaintiff were not subject to mandatory detention under any theory. *See* 8 U.S.C. § 1252(a) (1994). Had Congress intended a monumental shift in immigration law, it would have clearly said so. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (finding "implausible that Congress would give to the

[agency] through these modest words [such] power"). In fact, Congress said the opposite: the new § 1226(a) just "restates the current provisions … regarding the authority … to arrest, detain, and release on bond a[] [noncitizen]." H.R. Rep. No. 104-469, pt. 1, at 229. "Because noncitizens like [Plaintiff] were entitled to discretionary detention under [§] 1226(a)'s predecessor statute and Congress declared its scope unchanged … this background supports [Plaintiff's] position that he too is subject to discretionary detention." *Rodriguez Vazquez*, 779 F.Supp.3d at 1260.

d. **Defendants' policies violate longstanding EOIR regulations.**

Defendants' view violates EOIR's regulations. Following the IIRIRA, EOIR explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted ... will be eligible for bond." 62 Fed. Reg. at 10323. In the following decades, the relevant regulations remain unchanged. Compare 63 Fed. Reg. 27441, 27448 (May 19, 1998), with 8 C.F.R. § 1003.19(h)(2). The regulation governing IJs' bond jurisdiction still only limits an IJ's bond jurisdiction to noncitizens subject to § certain conditions irrelevant here 8 C.F.R. § 1003.19(h)(2). Regulatory "guidance and the agency's subsequent years of unchanged practice is persuasive." *Rodriguez Vazquez*, 779 F.Supp.3d at 1261. "When an agency claims to discover in a long-extant statute an unheralded power … [courts] greet its announcement with a measure of skepticism." *Util. Air Regul. Grp. v. EPA*, 574 U.S. 302, 324 (2014).

2. Defendants' Automatic Stay Violates Due Process and is Ultra Vires

a. Defendants' Use of the Automatic Stay Violates Procedural Due Process

The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), violates procedural due process. The Supreme Court has long-established that noncitizens are afforded due process. *Reno v. Flores*,

507 U.S. 292, 306 (1993). Under *Mathews v. Eldridge*, procedural due process requires balancing: (1) the private interest affected; (2) the risk of erroneous deprivation and the value of additional safeguards; and (3) the government's interest, including fiscal and administrative burdens. 424 U.S. at 335.

The first *Mathews* factor requires consideration of the private interest affected. That factor weighs heavily in Petitioner' favor, because the private interest at stake, Petitioner' liberty, is among the most fundamental. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Civil commitment or detention "for any purpose constitutes a significant deprivation of liberty that requires due process protections." *Addington v. Texas*, 441 U.S. 418, 425 (1979). Petitioner has a significant liberty interest in release, having been found by an IJ after a full hearing to pose no danger or flight risk, yet he remains detained and separated from his wife and U.S. citizen children.

Furthermore, even after a neutral IJ found him neither dangerous nor a flight risk, Petitioner faces ongoing incarceration based solely on DHS's unilateral action Petitioner. Once DHS invokes § 1003.19(i)(2), detention is automatically extended for at least 90 days pending BIA review and may continue for months through extensions and referrals to the AG. *See* 8 C.F.R. §§ 1003.6(c)(4)–(5), 1003.6(d). This factor therefore weighs heavily in Petitioner' favor.

The second *Mathews* factor concerns the risk of erroneous deprivation of Petitioner' liberty interest and the degree to which alternative procedures may ameliorate that risk. *Mathews*, 424 U.S. at 335. This factor, too, weighs heavily in Petitioner' favor. The regulation applies only to those noncitizens who have already prevailed in an adversarial bond hearing. After an individualized assessment, a neutral IJ found that Petitioner posed no danger or flight risk, ordering his release, yet the automatic stay allows DHS to unilaterally override that ruling. Courts have recognized that this procedure "renders the Immigration Judge's bail determination an empty

gesture" and "creates a patently unfair situation" by shifting adjudicatory power to the prosecutor. *Günaydin*, 784 F. Supp. 3d at 1188;.

Second, unlike an IJ's bond order based on individualized findings of danger or flight risk, the regulation lets DHS impose a stay without any specific justification or standards. *Günaydın*, 784 F. Supp. 3d, at 1187. Thus, the automatic stay deprives individuals of liberty without any neutral oversight and conflates prosecutorial and adjudicatory functions—a constitutional defect courts disfavor. *See Leal-Hernandez v. Noem*, 2025 WL 2430025, at *14 (automatic stay "permits DHS—the losing party—to automatically stay an IJ's bond order without individualized review"); *Zavala*, 310 F. Supp. 2d at 1078 (noting conflation of adjudicator and prosecutor roles). Even the DHS certification required under 8 C.F.R. § 1003.6(c)(1)(ii) provides little protection, as it comes from the same agency aligned with ICE's interests. *Sampiao*, 2025 WL 2374223, at *11.

Third, unlike ordinary stays that require showing likely success and irreparable harm, the automatic stay lets ICE obtain one as of right. *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). Courts have observed that this "turns these well-established procedural principles on their heads and carries a significant risk of erroneous deprivation." *Günaydın*, 784 F. Supp. 3d at 1189. Finally, less burdensome alternatives exist, such as DHS requesting a discretionary emergency stay under 8 C.F.R. § 1003.19(i)(1), which considers the case's individual circumstances and merits. This mechanism "mitigates the concern about DHS usurping the neutral adjudicatory role and provides additional safeguards that the automatic stay provision lacks. *Garcia Jimenez v. Kramer*, 2025 WL 2374223, at *4; *see also Günaydın*, 784 F. Supp. 3d at 1190.Accordingly, the second *Mathews* factor strongly supports Petitioner' claim.

Finally, under the third *Mathews* factor, the government cannot demonstrate any legitimate interest in detaining individuals who have already been found by a neutral IJ to pose no danger

and present no flight risk. *Herrera Torralba* noted that continued detention despite an IJ's release order raises the question of whether it is truly "to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons..." 2025 WL 2581792, at *11 (quotation omitted); *see also Mayo Anicasio* v. Kramer, No. 4:25-cv-03158, 2025 WL 2374224, at *4 (D. Neb. Aug. 14, 2025). The government has no substantial interest in keeping Petitioner detained; the IJ's decision finding him neither a risk of flight nor danger addresses any interest.

Also, alternative procedural safeguards do not burden the government, as DHS can request a discretionary stay from the BIA pending appeal under 8 C.F.R. § 1003.19(i)(1). This procedure "follows a more traditional process of requesting a stay from the appellate court and considers whether a stay is warranted based on the individual circumstances and merits of the case." *Kordia v. Noem*, No. 3:25-cv-01072-L-BT, 2025 U.S. Dist. LEXIS 136346, at *16-17 (N.D. Tex. June 27, 2025) (internal quotation omitted). The third *Mathews* factor weighs in Petitioner's favor.

Balancing the factors, Plaintiff's substantial liberty interest and the extreme risk of erroneous detention far outweigh the minimal government interests, which are already addressed by existing procedures. Courts nationwide agree. *Supra* fn. 2.

b. Defendants' use of the automatic stay Violates Substantive Due Process

Petitioner is entitled to substantive due process under the Fifth Amendment. Government detention violates substantive due process unless it occurs in a criminal proceeding with adequate procedural safeguards or in narrow, nonpunitive circumstances where a special justification outweighs the individual's liberty interest. *Zadvydas*, 533 U.S. at 690; *Leal-Hernandez*, 2025 WL 2430025, at *12–13. Here, 8 C.F.R. § 1003.19(i)(2) allows DHS to jail Petitioner despite an IJ's bond grant, without any special justification beyond its unlawful statutory interpretation. Moreover, the IJ's decision that Petitioner should be released on bond satisfies DHS' legitimate

interest in ensuring that Petitioner appears for future court dates. *See Leal-Hernandez*, 2025 WL 2430025, at * 13. However, the automatic-stay regulation renders "the IJ's custody redetermination order an 'empty gesture'" *Id.* (citation omitted). Federal Courts agree. *Supra* n. 2.

c. Defendants' use of the automatic stay is Ultra Vires

The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), is ultra vires because it purports to grant DHS authority that Congress vested in the AG—and, where appropriate, only to officers and adjudicators within the Department of Justice ("DOJ"). Under the Administrative Procedure Act, courts must hold unlawful and set aside agency action that exceeds statutory authority. 5 U.S.C. § 706(2)(C); *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998) ("Agency actions beyond delegated authority are 'ultra vires'"); *see also Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (invalidating an immigration regulation inconsistent with the statutory scheme).

First, the INA vests bond-and-detention decision-making in the AG, who may delegate that authority to DOJ officers. *See* 8 U.S.C. § 1226(a) (authorizing the AG to arrest and detain or release on bond); 28 U.S.C. § 510 (permitting the AG to delegate to "any other officer, employee, or agency of the Department of Justice"). IJs are DOJ appointees and therefore properly exercise delegated authority on behalf of the AG. *See* 8 U.S.C. § 1101(b)(4). By contrast, DHS is a separate agency, statutorily distinct from DOJ. *See* 6 U.S.C. § 111. The INA nowhere authorizes DHS to usurp the AG's delegated bond authority.

Second, § 1003.19(i)(2) impermissibly derails the statutory bond scheme. By invoking the automatic stay, DHS transforms an IJ's discretionary bond grant into mandatory detention, effectively rewriting § 1226(a) and usurping authority Congress gave the AG. Courts have held such overreach ultra vires. *See Zavala*, 310 F. Supp. 2d at 1079 (regulation that converts IJ's

discretionary release into mandatory detention "flouts the express intent of Congress and is ultra vires to the statute"); *see also Mayo Anicasio*, 2025 WL 2374224; *Jacinto*, 2025 WL 2402271; *Leal-Hernandez*, 2025 WL 2430025; *Carmona-Lorenzo*, 2025 WL 2531521. Third, the regulation contravenes the INA's delegation scheme, which centralizes bond authority in DOJ adjudicators; by letting DHS nullify IJ decisions on appeal, § 1003.19(i)(2) exceeds statutory authority and is invalid. *See Romero v. INS*, 39 F.3d at 980; *O'Keefe*, 132 F.3d at 1257. Accepting DHS's claimed authority allows DHS to void every IJ bond grant simply because it does not like the result.

B. **Petitioner Faces Imminent, Irreparable Harm**

Defendants incarcerate Plaintiff in jail-like conditions, causing harm that is immediate, ongoing, and cannot be remedied later. "The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972). Each day Plaintiff remains detained, he suffers not only the deprivation of his liberty but also disruption to his family, employment, and well-being, harms that cannot be undone. "It is hard to adequately state the significance of the potential injury" to a person who is illegally incarcerated, as one cannot "be given back" any day "he has spent in prison." *Case v. Hatch*, No. 08-CV-00542 MV/WDS, 2011 WL 13285731, *5 (D. N.M. May 2, 2011). Courts recognize that detention causes "potentially irreparable harm every day [one] remains in custody." *Rodriguez Vazquez*, 779 F.Supp.3d at 1262. This injury is "certain, great, actual, and not theoretical." *Heideman v. S. Salt Lake City, Utah*, 348 F.3d 1182, 1189 (10th Cir. 2003) (citations omitted). Courts routinely grant preliminary relief based on far less weighty interests, including the payment of taxes, control over real property, or termination of business agreements. *Ohio Oil Co. v. Conway*, 279 U.S. 813 (1929); *RoDa Drilling v. Siegal*, 552 F.3d 1203, 1210–11 (10th Cir. 2009); *Bray v. QFA Royalties, LLC*, 486 F.Supp.2d 1237 (D. Colo. 2007).

C. Balancing the Equities and Public Interest Weigh Heavily in Favor of Relief

In cases against the government, the balance of equities and the public interest typically merge. *See Nken v. Holder*, 556 U.S. at 436. The government cannot claim injury from being enjoined from engaging in unlawful conduct. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); *Wages & White Lion, Inv., L.L.C. v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. Colo. 2024) ("There is generally no public interest in … unlawful agency action"). Here, requiring the government to comply with the law and return to its prior bond-and-detention practices causes no cognizable harm. Courts have consistently recognized that "[t]he harm to the government is minimal" when an injunction prevents unlawful detention. *Rodriguez Vazquez*, 779 F.Supp.3d at 1262. By contrast, continued enforcement of the automatic stay regulation causes significant, irreparable harm to Plaintiff. Thus, both the equities and the public interest strongly favor preliminary relief.

D. Conclusion

For the foregoing reasons, Petitioner respectfully requests that this Court issue a temporary restraining order and preliminary injunction (1) enjoining Defendants from applying § 1225(b)(2)(A) against him; (2) enjoining Defendants from enforcing the automatic stay regulation against him; and (3) ordering his immediate release upon posting of the $10,000 bond set by the IJ. Petitioner further requests that the Court enjoin Respondents from transferring him outside this Court's jurisdiction while this action is pending.

Respectfully submitted,

/s/ Hans Meyer
Hans Meyer
Conor T. Gleason
The Meyer Law Office
1547 Gaylord St.

Denver, CO 80206
(303) 831 0817
hans@themeyerlawoffice.com
conor@themeyerlawoffice.com
ATTORNEYS FOR PLAINTIFF-PETITIONER

CERTIFICATE OF CONFERRAL

I hereby certify that consistent with D. Colo. Local Rule 7.1, before filing this motion, I conferred with counsel for Defendants-Respondents, Leslie Schulze, Assistant United States Attorney, US Attorney's Office for the District of Colorado, regarding the relief requested herein. Defendants-Respondents oppose this motion.

/s/ Hans Meyer
Hans Meyer, Esq.
Meyer Law Office, P.C.
1547 Gaylord St.
Denver, CO 80206
T: (303) 831 0817
E: hans@themeyerlawoffice.com

Attorney for Plaintiff-Petitioner

CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on October 2nd, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Jackie Alderte, hereby certify that I have mailed a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail on October 2nd, 2025.

Leslie Carol Schulze
Assistant U.S. Attorney
U.S. Attorney's Office
District of Colorado
1801 California Street, Ste. 1600
Denver, CO 80202

Kevin Traskos
Chief, Civil Division
U.S. Attorney's Office
District of Colorado
1801 California Street, Ste. 1600
Denver, CO 80202

Pam Bondi
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

And to: Kristi Noem and Todd Lyons, DHS/ICE, c/o:

Office of the General Counsel
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave., SE
Washington, D.C. 20528

And to:

Juan Baltazar
GEO Group, Inc.
3130 N. Oakland Street
Aurora, CO 80010

And to:

Robert Gaudian
Denver ICE Field Office
12445 E. Caley Ave.
Centennial, CO 80111

/s/ Conor T. Gleason
Conor T. Gleason, Esq.
Meyer Law Office, P.C.
1547 Gaylord St.
Denver, CO 80206
T: (303) 831 0817
E: conor@themeyerlawoffice.com

/s/ Jackie Alderte
Paralegal
Meyer Law Office
1547 Gaylord St.
Denver, CO 80206
Phone: 303.831.0817
jackie@themeyerlawoffice.com