IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martinez

Civil Action No. 25-cv-3078-WJM-KAS

JESUS MORALES LOPEZ

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as warden of the Aurora Contract Detention Facility, et al.

Respondents.

PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Jesus Morales Lopez, by and through undersigned counsel, respectfully moves this Honorable Court for a Temporary Restraining Order under the All Writs Act of 28 U.S.C. § 1651(a), Fed. R. Civ. P. 65(b), and D.C.COLO.LCivR 65.1(a), pending the adjudication of his First Amended Petition for Writ of Habeas Corpus, ECF No. 31. Morales Lopez moves the Court for an Order for his immediate release or for his immediate release upon reposting the bond amount as determined by the Immigration Judge on August 14, 2025, in accordance with the correct detention authority under INA § 236(a).

CONFERRAL ON MOTION

Pursuant to D.C.COLO.LCivR 7.1, undersigned counsel for Morales Lopez conferred with counsel for Respondents. Respondents indicated that they oppose the TRO as a matter of course.

LEGAL STANDARD FOR TRO

To prevail on a temporary restraining order, a movant must show: (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary

relief, (3) the balance of equities tips in the movant's favor, and (4) an injunction is in the public interest. *M.G. through Garcia v. Armijo*, 117 F.4th 1230, 1238 (10th Cir. 2024). The final two factors "merge" when the government is the opposing party. *Denver Homeless Out Loud v. Denver, Colorado*, 32 F.4th 1259, 1278 (10th Cir. 2022).

Where a party seeks a "disfavored" preliminary injunction, the Tenth Circuit requires the moving party to make a *strong* showing that the likelihood-of-success-on-the-merits factor and the balance-of-harms factors tilt in his favor. *Free the Nipple—Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 797 (10th Cir. 2019) (emphasis added). A disfavored injunction may exhibit any of three (3) characteristics: (1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win. *Id.*

ARGUMENTS

Morales Lopez seeks a "partially" disfavored preliminary injunction and can make a "strong showing" on the likelihood of the success of the merits. *See Mendoza Gutierrez v. Baltazar,* No. 25-cv-2720-Case RMR, 2025 WL 2962908, ECF No. 33, at *10 (D. Colo. Oct. 17, 2025) (citing *Arostegui-Maldonado v. Baltazar*, No. 25-cv-2205-WJM-STV, 2025 WL 2280357, at *4 (D. Colo. Aug. 8, 2025) (holding that a request for a constitutionally adequate bond hearing for a noncitizen is a "partly" disfavored preliminary injunction). Morales Lopez is likely to succeed on the merits of his claim that he is unlawfully detained under 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention authority and should be subject to 8 U.S.C. § 1226(a)'s discretionary scheme.

A. Likelihood of Success on the Merits

Morales Lopez is more than likely to succeed on the merits of his claim that he is unlawfully detained under Respondents' interpretation of INA § 235(b).

In other district courts that have considered this same or similar issue "have concluded that aliens who enter without inspection and then reside in the United States fall within the scope of Section 1226(a) rather than Section 1225(b)(2)(A)" by relying "on the same types of arguments [Morales Lopez] makes here." *See Mendoza Gutierrez v. Baltazar,* No. 25-cv-2720-Case RMR, 2025 WL 2962908, ECF No. 33, at *10 (D. Colo. Oct. 17, 2025) (citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256-61 (W.D. Wash 2025) (*Rodriguez I*) (on a motion for preliminary injunction, finding a similarly situated plaintiff to Petitioner likely to succeed on the merits based on analysis of the two statutes' plain text, their relationship to one another, legislative history, and longstanding DHS practice). The same is true in courts in the Tenth Circuit. *See Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729, at *6 (D.N.M. Sept. 17, 2025) (determining petitioner, who entered the United States without inspection in the late 1980s and raised two U.S. Citizen children, detention "should have been governed by § 1226 [rather than § 1225] and that the denial of a meaningful bond review and his resultant continued detention violates his due process rights"); *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880, at *3 (D. Colo. Sept. 16, 2025) (agreeing "with Petitioner that Respondents were wrong to detain him without an opportunity to seek release on bond" because "[p]etitioner is not subject to § 1225(b)(2)(A)'s mandatory detention provision, nor does he fall outside of § 1226(a)'s discretionary detention provision based on any § 1226(c) exceptions.").

A proper understanding of the relevant statutes, in light of their plain text, overall structure, and uniform case law interpreting them, compels the conclusion that § 1225's provision for mandatory detention of noncitizens "seeking admission" does not apply to someone like Morales Lopez who has been residing in the United States for more than two years. *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025); *see also*

Jimenez v. FCI Berlin, Warden, No. 25-cv-326-LM-AJ, 2025 WL 2630390, at *8 (D.N.H. Sept. 8, 2025) ("Because § 1225(b)(2)(A) applies to applicants for admission who are seeking to enter the United States, it cannot apply to Jimenez, who has already entered the country and has been residing here for over two years."); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) ("[T]he plain text of Sections 1225 and 1226, together with the structure of the larger statutory scheme, indicates that Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the Attorney General while residing in the United Sates."); *Rodriguez I*, 779 F. Supp. 3d at 1261 (holding that Section 1226, not 1225(b)(2), governed inadmissible noncitizens residing in the country).

This Court should agree with those district courts along with other judges in the District of Colorado that have "join[ed] the numerous other district courts that have rejected the government's recent interpretation of the relationship between § 1225 and § 1226" after the BIA's decision in *Matter of Yajure Hurtado*. *See Mendoza Gutierrez v. Baltazar,* No. 25-cv-2720-Case RMR, 2025 WL 2962908, ECF No. 33, at *14 (D. Colo. Oct. 17, 2025) (citing *Jaime Vincio Ortiz Doniz, Petitioner, v. Christopher Chestnut, et al., Respondents*, No. 1:25-cv-01228 JLT, SAB, 2025 WL 2879514, at *11 (E.D. Cal. Oct. 9, 2025); *see also Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 WL 2753496, at *5 (D.N.J. Sept. 26, 2025) (finding that the plain language of § 1225 does not apply to petitioner who entered the United States without inspection 23 years ago and that her mandatory detention violates the INA and Due Process Clause of the Fifth Amendment).

This statutory interpretation aligns with the Supreme Court's prior analysis in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). There, the Court wrote, "[i]n sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under

§ § 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under § 1226(a)." *Id.* at 289.

The title of § 1225, Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing, indicates Congress intended § 1225 to apply to inspections that occur at the port of entry or near the border. *Zumba*, 2025 WL 2753496, at *5; *see also Dubin v. United States*, 599 U.S. 110, 120-21 (2023) ("This Court has long considered that the title of a statute and the hearing of a section are tools available for the resolution of a doubt about the meaning of a statute."). If the § 1225(b)(2) catchall provision did not apply to noncitizens who have lived for years within the United States, then it is meaningless and does not apply to anyone. *Ortiz Donis*, 2025 WL 2879514, at *11. As the *Ortiz Donis* court explained "§ 1225(b)(2) applies to arriving noncitizens who are inadmissible on grounds other than 8 U.S.C. § § 1182(a)(6)(C) or 1182(a)(7).... There are thus arriving noncitizens inadmissible on these other bases who would fall under Section 1225(b)(2), as opposed to Section 1225(b)(1)." *Id.* Therefore, § 1225(b)(2) only applies to noncitizens "seeking admission" and inspected while trying to enter the country, and not to noncitizens who have lived in the United State continuously for over two years.

Morales Lopez is also not "seeking admission" or an "applicant for admission" by virtue of his EOIR-42B, Application for Non-LPR Cancellation of Removal because the two terms are not synonymous and because applying those terms in that manner would render the phrase seeking admission in § 235(b) superfluous. *See Ortiz Donis* at *8.

The plain language of 8 U.S.C. § 1226—which provides that, "[o]n a warrant issued by the Attorney General, an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States"—indicates Congress's intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant. *See* 8 U.S.C.

§ 1226(a) (emphasis added). This Court should agree with the other district courts that have conducted a statutory analysis of these two statutes and find that if 8 U.S.C. § 1225 already mandates detention for noncitizens "already in the country" as Respondents argue, it would have been superfluous for Congress to pass the Laken Riley Act, amending § 1226 to add another category of noncitizens who much be detained. *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025); *see also Ortiz Donis*, 2025 WL 2879514, at *9 ("[T]he Government's interpretation would 'nullify' a recent amendment to the immigration statutes.").

Reading the two statutes side by side, it is clear that § 1225 was intended for noncitizens inspected upon entry to the United States or who have lived in the United States for less than two years, and § 1226(a) is intended for the apprehension and detention of aliens "already in the country." *Jennings*, 583 U.S. at 281. Therefore, § 1226(a) is intended to apply to Morales Lopez who was apprehended while already in the country after almost 20 years of residence here.

The Board's decision on October 23, 2025, that solely relied on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), does not contain persuasive authority and should not be relied on by the Court. *See* ECF No. 31 at Attachment L. In *Yajure Hurtado*, the BIA "acknowledge[d] that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection" and that "the supplemental information for the 1997 Interim Rule titled '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), reflects that the Immigration and Naturalization Service took the position at that time that '[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible

for bond and bond redetermination.'" *Yajure Hurtado*, 29 I&N Dec. at 225 n.6. Whether noncitizens in Morales Lopez's position (applicants for admission who have resided in the country for over two years) are eligible for bond is a matter of statutory interpretation, not administrative discretion. Interpretation of the meaning of a statute belongs to the "independent judgment" of the courts, as "agencies have no special competence in resolving statutory ambiguities." *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86, 401 (2024). Therefore, because it is the "responsibility of the court to decide whether the law means what the agency says" the Court should disagree with the holding of *Yajure Hurtado* and decline to follow it. *Perez v. Mortgage Bankers Assn.*, 575 U.S. 92, 109, (2015) (Scalia, J., concurring in judgment). This Court should join other courts throughout the nation and finds that DHS has adopted a policy that likely violates federal law.

Also weakening Respondents' position that 8 U.S.C. § 1225 applies to Morales Lopez is the fact that when ICE arrested him on July 2, 2025, they did so pursuant to a Form I-200, "Warrant for Arrest of Alien," ECF No. 31 at Attachment B, and issued a Form I-286 "Notice of Custody Determination," *id.* at Attachment C. Both forms specifically reference INA § 236, 8 U.S.C. § 1226(a). Respondents allegedly "canceled" the Form I-286 initially issued to Morales Lopez after the IJ issued a decision on bond and failed to issue any other documents notifying Morales Lopez he was being detained under 8 U.S.C. § 1225, or under what authority they canceled the original I-286. As a recent district court noted, "Courts have given great weight to the manner in which DHS treated the petitioner in determining which detention statute applies." *Zumba*, 2025 WL 2753496, at *9 (citing *Lopez Benitez*, 2025 WL 2371588, at *3 (holding that § 1225 did not apply because (1) DHS had consistently treated petitioner as subject to discretionary detention

under § 1226(a) and (2) the "plain text, overall structure, and uniform case law interpreting" the statutory provision compels the conclusion)).

In sum, the Court should find that Morales Lopez is likely to succeed on the merits that he is unlawfully detained under 8 U.S.C. § 1225 and that § 1226 did and should have governed his detention from the outset. This is a strong showing of Morales Lopez's likelihood of success on the merits sufficient to justify even a mandatory injunction. Because his case presents the same factual posture and legal question, and no material distinction exists between his case and other district courts that have already considered this issue, Morales Lopez makes a very strong case for being likely to succeed on the merits of his underlying First Amended Petition for Writ of Habeas Corpus, ECF No. 31.

B. Irreparable Harm

A plaintiff suffers irreparable injury when the court would be unable to grant an effective monetary remedy after a full trial because such damages would be inadequate or difficult to ascertain. *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 356 F.3d 1256 (10th Cir. 2004).

There is no question Morales Lopez is suffering irreparable harm. Morales Lopez is detained in conditions that this Court has recognized are "more akin to incarceration than civil confinement." *Daley v. Choate*, No. 22-cv-03043-RM, 2023 WL 2336052, at *4 (D. Colo. Jan. 6, 2023). Morales Lopez is the main financial provider for his wife and 4 USC children. ECF No. 31 at Attachment J. Each day he is detained, his family experiences increased financial, caregiving, and emotional burdens. ECF No. 31 at Attachments J, K.

What is unique about Morales Lopez's circumstances is that he is being unlawfully detained without release on bond. Even if Morales Lopez is not ultimately successful in his efforts to avoid removal, the record here shows that if Respondents had been required to comply with the

IJ's bond order under INA § 236(a), the proper detention framework for Morales Lopez, he would have paid the bond, been released, and it would have given him and his family time to prepare for their future.

Federal courts have long recognized that the infringement of a constitutional right is an irreparable injury. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury."); *Free the Nipple-Fort Collins*, 916 F.3d at 805 ("Most courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury.").

The Court should conclude that Morales Lopez has made a strong showing on the merits of his claim that his detention without release on bond violates the INA and his procedural due process rights. Absent an injunction from this Court, the infringement on his Fifth Amendment rights will continue. Moreover, because Respondents are denying Morales Lopez's release that he has proven to an Immigration Judge that he merits, establishes irreparable harm absent injunctive relief. *See Rodriguez I*, 779 F. Supp. 3d at 1262. Thus, Morales Lopez has satisfied the second preliminary injunction factor.

C. Balance of Equities and the Public Interest

A movant must show that the harm they suffer outweighs any harm to the opposing party, and, if issued, the injunction would not adversely affect the public interest. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 112 (10th Cir. 2024). These two factors merge where the government is the opposing party. *Id.*

Respondents would not be injured in enforcing the Immigration Judge's Order as they previously had a chance to argue before a neutral arbitrator their positions and an Immigration Judge agreed with Morales Lopez after reviewing the evidence and hearing arguments that he is

not a danger to the community or a flight risk. The harm of unlawfully detaining Morales Lopez indefinitely without release in contravention of INA § 236 is much greater than the harm Respondents will suffer by compelling them to return to their past practices of detaining noncitizens who have lived in the United States for several years under § 1226. *See Xuyue Zhang v. Barr*, 612 F. Supp. 3d 1005, 1017 (C.D. Cal. 2020) ("[T]he public interest benefits from a preliminary injunction that expedites a bond hearing to ensure that no individual is detained in violation of the Due Process Clause."). This is particularly so given the patently harsh conditions Morales Lopez continues to be subjected to, as outlined above.

For these reasons, this Court should find that the balance of equities and public interest factors favor a preliminary injunction for Morales Lopez's immediate release in accordance with posting the bond amount as ordered by the Immigration Judge on August 14, 2025.

CONCLUSION

Morales Lopez respectfully requests that this Court find that he has made a strong showing that he is likely to succeed on the merits that he is unlawfully detained under § 1225(b) and that the IJ was correct when he granted bond under § 1226(a). Because he has also shown irreparable harm and that balance of hardships tip sharply in his favor, the Court must grant Morales Lopez's TRO and order that Respondents release Morales Lopez either immediately or upon posting the $ 7,500 as ordered by the Immigration Judge on August 14, 2025.

Dated this 20th day of November 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2025, I electronically filed the foregoing **Motion for Temporary Restraining Order** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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