UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

LUCAS CABRERA-HERNANDEZ, Petitioner, v. **PAMELA BONDI,** Attorney General of the United States; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; TODD LYONS, Acting Director of Immigration and Customs Enforcement; Sylvester M. Ortega, Acting Director of San Antonio Field Office, U.S. Immigration and Customs Enforcement; and PERRY GARCIA, Warden, La Salle County Regional Detention Center, in their official capacities, Respondents.	Case No. 5:25-cv-197

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO REQUEST FOR TEMPORARY RESTRAINING ORDER

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PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO REQUEST FOR TEMPORARY RESTRAINING ORDER

Petitioner Lucas Cabrera-Hernandez, through Counsel, submits this response to Respondents' Opposition to Petitioner's Request for a Temporary Restraining Order. Petitioner reasserts the factual and legal claims made in his Motion for Temporary Restraining Order and Preliminary Injunction Ordering Release Pending Final Judgment and Memorandum in Support. Addressing Respondents' claims one-by-one, Petitioner states the following:

I. Petitioner is properly seeking a preliminary injunction as he is seeking to preserve the "status quo," which in this case is the interpretation of the laws governing mandatory and discretionary detention prior to Respondents' July 8, 2025 memo articulating a radical, new interpretation of the laws.

The Respondents, representing the Department of Homeland Security ("DHS") and the Department of Justice ("DOJ"), contend that Petitioner, Mr. Cabrera-Hernandez, is improperly seeking a preliminary injunction and argue instead that he is seeking a mandatory injunction, which requires he meet a higher legal standard. Filing No. 15, p. 8 ("Here, the status quo is detention, which Petitioner seeks to alter by obtaining, as preliminary relief, enjoining DHS from continuing to detain him. He therefore must show a clear entitlement to relief under the facts and law."). This assertion is erroneous.

To obtain a temporary restraining order or preliminary injunction, an applicant must demonstrate—among other things— "substantial likelihood of success on the merits." *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000). A petitioner "seeking a mandatory injunction . . . bears the burden of showing a clear entitlement to the relief under the facts and the law." *Justin Indus., Inc. v. Choctaw Sec., L.P.*, 920 F.2d 262, 268 n.7 (5th Cir.

1990) (citing *Exhibitors Poster Exch., Inc. v. National Screen Serv. Corp.*, 441 F.2d 560, 561 (5th Cir.1971) (per curiam)).

Whether a request for an injunction is preliminary or mandatory depends on whether the injunction prohibits actions and preserves the "status quo" or mandates Respondents to take affirmative action. *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060–61 (9th Cir. 2014) (citing *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878–79 (9th Cir.2009)). The 10th Circuit Court of Appeals states: "Preliminary injunctions are typically 'prohibitory' in the sense that they prohibit the defendant from doing something," and other injunctions are mandatory when they "affirmatively require" action. *Trial Laws. Coll. v. Gerry Spence Trial Laws. Coll. at Thunderhead Ranch*, 23 F.4th 1262, 1274–75 (10th Cir. 2022)

Respondents argue that in this case, "the status quo is detention," and therefore Petitioner must demonstrate "clear entitlement to relief under the facts and law" for mandatory injunctions. Filing No. 15, p. 8. But while Petitioner believes his case meets this higher legal standard, the proper standard in this case is "substantial likelihood of success" for prohibitory injunctions, as the status quo in this case is the Agency interpretation of the laws governing mandatory and discretionary detention preceding the DHS's July 8, 2025 memo announcing its radically new interpretation of those laws, which it developed in coordination with the DOJ. Filing 1-1.

The Fifth Circuit Court of Appeals defined "status quo ante" as "'[t]he situation that existed before something else (being discussed) occurred." *Veasey v. Abbott*, 870 F.3d 387, 392 (5th Cir. 2017) (quoting *Status Quo Ante*, Black's Law Dictionary (10th ed. 2014)). Several circuit courts of appeals define "status quo" in the context of a preliminary injunction as the "last peaceable uncontested status existing between the parties before the dispute developed[.]" *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 981 (10th Cir. 2004)

(citing 11A Charles Alan Wright et al., Federal Practice and Procedure § 2948, at 136 (2d ed.1995)); *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 733 (D.C. Cir. 2022) ("The status quo is the last uncontested status which preceded the pending controversy."); *Westinghouse Elec. Corp. v. Free Sewing Mach. Co.*, 256 F.2d 806, 808 (7th Cir. 1958) ("The status quo is the last uncontested status which preceded the pending controversy.").

Here, the last peaceable uncontested status on this matter was the DHS and DOJ's interpretation of the Immigration and Nationality Act ("INA") at 8 U.S.C. Secs. 1225 and 1226, before the DHS's July 8, 2025 memo announcing its drastic, new interpretations of those laws. Filing No. 1-1; *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d at 981. The situation that existed before the DHS's July 8, 2025 memo was that the DHS and DOJ interpreted the INA at 8 U.S.C. Sec. 1226 to apply to all noncitizens arrested and detained inside the United States and 8 U.S.C. Sec. 1225 as applying to noncitizens caught at or near the U.S. border or those seeking admission at ports of entry. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107–08 (2020) (stating that 8 U.S.C. Sec. 1225 applied at "the threshold of initial entry" and that "An alien who arrives at a 'port of entry,' *i.e.*, a place where an alien may lawfully enter, must apply for admission. An alien like respondent who is caught trying to enter at some other spot is treated the same way."); *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing the process of inspection and admission that "begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.").

Prior to the DHS's and DOJ's new interpretations of the laws, immigration judges regularly took jurisdiction over bond and custody redetermination requests for noncitizens such as Petitioner, Mr. Cabrera-Hernandez. Filing No. 1-6; Filing No. 1-3. In fact, two immigration

judges took jurisdiction over his custody redetermination requests and granted Mr. Cabrera-Hernandez bond twice, first on October 22, 2013, and this year on August 6, 2025. *Id.*

Contrary to the claims of Respondents, the status quo is not mandatory detention. The status quo before the July 8, 2025 memo and the DOJ decision in *Matter of Yajure-Hurtado* was that under 8 U.S.C. Sec. 1226(a), immigration judges regularly took jurisdiction over bond requests for noncitizens such as Petitioner, and persons such as Mr. Cabrera-Hernandez were in fact released on bond, after an immigration judge ("I.J.") granted their requests for release on bond. Thus, because Petitioner is seeking to preserve the status quo before the DHS announcement of its new interpretation of the INA's detention laws and seeks to prevent Respondents from continuing to enforce an unlawful interpretation of those laws, Petitioner is seeking a prohibitive preliminary injunction. *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1060–61 (9th Cir. 2014) (citing *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d at 878–79 (9th Cir.2009)); *Trial Laws. Coll. v. Gerry Spence Trial Laws. Coll. at Thunderhead Ranch*, 23 F.4th at 1274–75.

For this reason, Mr. Cabrera-Hernandez must demonstrate "substantial likelihood of success on the merits" and not "clear entitlement to the relief under the facts and the law." *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d at 442; *Justin Indus., Inc. v. Choctaw Sec., L.P.*, 920 F.2d at 268 n.7. Mr. Cabrera-Hernandez is able to meet these standards.

II. Respondents' argument that Petitioner has no likelihood of success on the merits of his habeas petition because he is subject to mandatory detention under the INA at 8 U.S.C. Sec. 1225(b)(2) is not valid; Respondents ask the Court to ignore principles of statutory construction, the statutory text, the statute's history, Congressional intent, and several district courts that have found the interpretation to be unlawful, in order to give deference to their unlawful agency interpretations.

Respondents urge the Court to ignore the decisions of other district courts who have weighed the questions posed here on similar cases and have concluded that Respondents' novel interpretations of the immigration detention laws are unlawful. Filing No. 15, pp. 10, 20. In so doing, they are asking this Court to ignore principles of statutory construction, "the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades." *Padron Covarrubia v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025).

After earnest consideration and undertaking their own analysis of the laws pertaining to mandatory and discretionary detention, numerous district courts, including this one, have found Respondents' novel and revisionist interpretations of the 8 U.S.C. Sec. 1225(b)(2) and 8 U.S.C. Sec. 1226 to be unlawful and to violate the due process rights of noncitizens in the United States who have built established ties to the United States. *See Ortiz-Ortiz v. Bondi*, No. 5:25-CV-132, slip. op. at 5 (S.D. Tex. Oct. 25, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Ermeo Sicha v. Bernal*, 2025 WL 2494530 (D. Me. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025);

Bejarano v. Bondi, 25-cv-03236 (D. Minn. Aug 18, 2025); *Maldonado*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Ferrera Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).

Weighing the legal matters and the facts in this case, this Court should do the same.

a. Federal District Courts are not required to give deference to agency interpretations that are unlawful and instead are required to prohibit unlawful agency interpretations of the law.

Respondents argue that Mr. Cabrera-Hernandez is not entitled to injunctive relief because the Board of Immigration Appeals ("BIA") vacated the I.J.'s order of release on bond, following its own precedential decision in *Matter of Yajure-Hurtado*. Filing No. 15, p. 12–13, 21. In *Matter of Yajure-Hurtado*, the BIA reiterated DHS's drastically revised interpretations of 8 U.S.C. Secs. 1225 and 1226 and held the that an I.J. has no authority to consider bond requests for any person who entered the United States without admission and that such individuals are subject to mandatory detention under 8 U.S.C. Sec. 1225(b)(2)(A). 29 I. & N. Dec. 216 (BIA 2025).

Matter of Yajure-Hurtado is an extension of Respondents' coordinated campaign to detain noncitizens who otherwise would have qualified for release on bond under the INA's detention and release laws. *See* Filing No. 1-1. The BIA is an agency within the DOJ, which is supposed to be separate body with its own responsibilities, which include reviewing agency decisions of the DHS. *Matter of Aceijas-Quiroz*, 26 I&N Dec. 294, 299 (BIA 2014) ("Since its creation in 2003, the DHS has existed separate and apart from the Department of Justice. Although the DHS and Department of Justice continue to have shared responsibility in

immigration-related matters, Congress has delineated authority and responsibility between the agencies, with certain functions now accorded to the DHS as a separate and distinct agency from the Department of Justice."). In this case, the DOJ coordinated with the DHS to develop the new interpretations of law and policies for detention, announced in the July 8, 2025 memo to ICE employees. *Id.* ("This message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act ("INA"), rather than section 236, is the applicable immigration detention authority for all applicants for admission.").

The Court should find the BIA's agency interpretations in *Matter of Yajure-Hurtado*, and announced in the DHS memo on July 8, 2025, are unlawful after undertaking its own analysis of the facts and laws in the case. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13, 144 S. Ct. 2244, 2273, 219 L. Ed. 2d 832 (2024). The Supreme Court, in overruling its decision in *Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), stated that courts "must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the [Administrative Procedure Act] requires." *Id.* And while the Supreme Court advised that "[c]areful attention to the judgment of the Executive Branch may help inform that inquiry". . . the courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Id.*

Respondents argue that because the BIA used "its immigration expertise and gave a lengthy, comprehensive account as to why the Government's position in this case is not only correct, but comfortably so" that the Court should accord "great weight to the persuasiveness of *Hurtado*." Filing No. 15, p. 18 (stating that the Court should accord deference as described in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)).

The current DHS and DOJ actions—drastically revising its interpretation of the mandatory and discretionary detention laws and refusing to release Petitioner, Mr. Cabrera-Hernandez, after an I.J. ordered his release on bond—are unlawful under the INA. Petitioner has explained at length in his Amended Petition for Writ of Habeas Corpus, and his memorandum in support of his request for temporary restraining order and preliminary injunction, the reasons why these actions are not lawful. Filing No. 5 and Filing No. 2.

Respondents ask the Court to ignore their previous interpretations of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), made soon after Congress passed those laws. They are asking the Court to deem those prior interpretations for 8 U.S.C. Sec. 1225 and 8 U.S.C. Sec. 1226 as erroneous and invalid and instead to accept their current novel interpretations as correct. Filing No. 15, p. 18. The Agencies' current interpretations strip noncitizens of the opportunity to seek liberty and to reunite with their families and instead call for detention of all noncitizens who would otherwise have qualified for the opportunity to seek custody redetermination under the Agencies' previous interpretations. *See* Filing No. 1-1, and *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216.

This Court should instead give weight to the Agencies' earlier interpretations and deem the Agencies' current revisionist theories as suspect, as the Supreme Court has stated that an agency's interpretations done closer in time to the legislation's enactment, are deemed more valid than later interpretations. *Loper Bright v. Raimondo*, 603 U.S. at 386. That is because "the longstanding 'practice of the government' "—like any other interpretive aid—"can inform [a court's] determination of 'what the law is.' " *Id.* (quoting *NLRB v. Noel Canning*, 573 U.S. 513, 525, 134 S.Ct. 2550, 189 L.Ed.2d 538 (2014)). Petitioner asks the Court to find persuasive the Agencies' interpretations in effect during the years following passage of IIRIRA and before the

DHS announced its new interpretation on July 8, 2025 and the BIA under the DOJ issued its decision in *Matter of Yajure-Hurtado*.

b. Respondents ask the Court to ignore principles of statutory construction in their argument that the phrase "seeking admission," as used in 8 U.S.C. Sec. 1225(b)(2), is synonymous with the phrase "applicant for admission," as used in the same statutory schemes.

Respondents urge the Court to ignore principles of statutory construction, and to interpret the phrases "seeking admission" and "applying for admission," as used in 8 U.S.C. Sec. 1225(b)(2), as "plainly synonymous." Filing No. 15, p. 14. To justify this interpretation, Respondents argue that the terms, as used in another subsection of the statute make clear that the terms "applicants for admission" and "seeking admission" are synonymous. They raise that Section 1225(a)(3) requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). They argue that the Supreme Court decision in *United States v. Woods* supports their interpretation that the word "or" used in this context is used as an "appositive" to introduce a phrase "synonymous with what precedes it." *Id.* (citing *United States v. Woods*, 571 U.S. 31, 45 (2013)).

This argument misstates the Supreme Court's reasoning in *United States v. Woods*, which made clear that the word "or" in "its ordinary use is almost always disjunctive, that is, the words it connects are to 'be given separate meanings.'" *United States v. Woods*, 571 U.S. at 45. In this case, "applicants for admission" and "seeking admission" are to be accorded separate meanings, as used in 8 U.S.C. Sec. 1225(b)(2), which limits mandatory detention to applicants for admission who are "seeking admission," and Sec. 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3).

The full text of 8 U.S.C. Sec. 1225(a)(3) makes clear that the phrase "seeking admission" is to be interpreted as an event in time, along with other acts or events in time as described in that subsection. It states:

> All aliens (including alien crewmen) who are applicants for admission or otherwise ***seeking admission*** or ***readmission to*** or ***transit through the United States*** shall be inspected by immigration officers.
>
> *Id.* (emphasis added).

Congress used the phrase "or" three times in 8 U.S.C. Sec. 1225(a)(3) to distinguish three different acts or events that an applicant for admission may be performing: "seeking admission," "readmission," or "transit through the United States." These phrases describe three different concepts that are not synonymous with one another or with the phrase "applicants for admission." Principles of statutory construction make clear that "applicants for admission" are a classification of persons, and the phrase "seeking admission," "readmission," and "transit through the United States," describe acts or events in time, when applicants for admission are to be inspected by immigration officers.

Thus, Respondents' arguments that the term "applicants for admission" and "seeking admission" are synonymous are not valid. Under 8 U.S.C. Sec. 1225(b)(2), mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Id.*; *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 at *2 (D. Mass. July 24, 2025). The phrase "seeking admission" "necessarily implies some sort of present-tense action." *Id.* at *6; *see also Matter of M–D–C–V–*, 28 I. & N. Dec. 18, 23 (BIA 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333, 112 S. Ct. 1351, 1354 (1992) ("Congress' use of a verb tense is significant in

construing statutes."). In other words, the plain language of Section 1225 applies to noncitizens *currently* seeking admission into the United States at the nation's border or another point of entry.

To ignore the plain language, which limits the application of 8 U.S.C. Sec. 1225(b)(2) to noncitizens in the process of seeking admission into the United States, is to not give effect to the meaning of words and to make the words included in the statute superfluous. *Corley v. United States*, 556 U.S. 303, 314 (U.S. 2009). It would violate the most basic of interpretive canons, which is that "'[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant ....'". *Id.* (citing *Hibbs v. Winn,* 542 U.S. 88, 101, 124 S.Ct. 2276, 159 L.Ed.2d 172 (2004) (quoting 2A N. Singer, Statutes and Statutory Construction § 46.06, pp.181–186 (rev. 6th ed.2000)).

c. The few district court cases Respondents have asked this Court to follow on this matter—*Vargas*, *Chavez*, *Garibay-Robledo*, and *Sandoval*—are inapplicable as they demonstrate errors of pleading on the parts of the petitioners, do not state the same arguments as those made in this case, or do not undertake their own analysis of the statutes.

In its argument, Respondents ask the Court to follow district courts that have ruled against the noncitizen petitioner's requests for temporary restraining orders or habeas relief. Filing No. 15, pp. 19–20. Particularly, they ask the Court to hold the following cases to be persuasive in this case: *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, Filing No. 15-1, (N.D. Tex. October 24, 2025); and *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025).

Respondents also ask the Court to find *Matter of Yajure-Hurtado* to be holding on this case. As discussed in Petitioner's memorandum in support of Motion for Temporary Restraining Order and Preliminary Injunction, and here in Section II.a. *supra*, the BIA decision in *Matter of Yajure-Hurtado* is unlawful agency interpretation and the Court is not required under the Administrative Procedure Act to give deference to the agency's interpretation, and is instead required to make an independent assessment of the lawfulness of an agency's actions when statutes are ambiguous. *Loper Bright v. Raimondo*, 603 U.S. 369 at 412–13.

In *Vargas Lopez v. Trump*, the Nebraska district court judge in this case admonished the petitioner for recycling a petition from someone else's case, and for failing to replace the previous petitioner's facts in order to state specific facts relevant to the petitioner, including how long the petitioner had been living in the United States, where he had been living before he was detained, and when, where, and how he was detained. No. 8:25-CV-00526, 2025 WL 2780351 at *1. "The Court's consideration of this Petition has been hampered by the mistakes made in it," U.S. District Judge Brian C. Buescher wrote. *Id.* "The Court concludes that the mistakes in the Petition, including the failure of Vargas Lopez to attach certain referenced exhibits, prevent Vargas Lopez from meeting his burden to show he is entitled to habeas relief." *Id.* at *2. Thus, because of the errors in pleadings made in the case in *Vargas Lopez*, the Court here should not find this case to be persuasive.

In *Chavez v. Noem*, the petitioners in that case attempted to argue that they were not "applicants for admission" as described in 8 U.S.C. Sec. 1225(a)(1), and therefore not subject to the overall statutory scheme of 8 U.S.C. Sec. 1225. No. 3:25-CV-02325, 2025 WL 2730228 at *4. The subsection at 1225(a)(1) states: "An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and

including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). The petitioners in *Chavez* conceded to being present in the United States without having been admitted but argued that they were not "applicants for admission," as described in 8 U.S.C. Sec. 1225(a)(1). *Id.*

Here, in this case, Mr. Cabrera-Hernandez makes no argument that he is not an "applicant for admission." Instead, he argues that the INA at 8 U.S.C. Sec. 1225(b)(2) requires that an applicant for admission also be "seeking admission" at the time of his encounter with immigration inspectors in order to be subject to mandatory detention. Filing No. 5, paras. 52–57; Filing No. 2, pp. 19–22; *see also* § II.b, *supra.* Petitioner here, Mr. Cabrera-Hernandez, and the petitioners in *Chavez* made different claims. For that reason, making comparisons between the two cases is not appropriate. Thus, because the petitioners in *Chavez* made a different argument from the one Petitioner here is making, this Court should not find *Chavez v. Noem* to be persuasive.

Like the petitioners in *Vargas Lopez,* the petitioner in *Garibay-Robledo v. Noem* made errors in pleading which caused the court in that case to deny his motion for temporary restraining order, and later again his motion for reconsideration of his application for temporary restraining order. No. 1:25-CV-00177, Filing No. 15-1, at p. 1. The petitioner in that case made errors, such as claiming a Ninth Circuit Court of Appeals case that was not on point to the matter, was binding in the Fifth Circuit; and arguing that he was not an "arriving alien" and therefore not subject to the mandatory detention under 8 U.S.C. Sec. 1225(b)(2). Nonetheless, the court in that case concluded that the several district courts finding that the mandatory detention laws apply only when an applicant for admission is "seeking admission"—including in

the Southern District of Texas—were not persuasive "at least at this preliminary stage of litigation." *Id.* at p. 7. Petitioner asks the Court not to find persuasive a case that included errors of pleading that prejudiced the case for the petitioner, and to find the numerous district courts deciding on this matter to be more persuasive than *Vargas Lopez,* which was hampered by errors in its pleadings.

In *Sandoval v. Acuna*, the Louisiana Western District Court determined that because the Supreme Court in *Jennings v. Rodriguez* didn't specifically find that 8 U.S.C. Sec. 1225(b)(2) applied *only* to aliens seeking entry into the United States, and stated that it *primarily* applies to aliens seeking into the United States, it agreed with the DHS and DOJ position that the mandatory detention provisions of 8 U.S.C. Sec. 1225(b)(2) applied to all persons in the United States present without admission. No. 6:25-CV-01467, 2025 WL 3048926 at *6. It should be noted that *Jennings* can be interpreted in different ways by different advocates on this matter, because the decision is not entirely on point to the questions in this case. In another section of *Jennings*, the Supreme Court stated that Section 1225(b)(2) applies to noncitizens "seeking admission" into the United States, while Section 1226 applied to noncitizens already present in the United States. *Jennings v. Rodriguez*, 583 U.S. 281 at 289. ("In 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) and (c)."

The Court should find the conclusion of the *Sandoval* court not to be persuasive, as the court in that case did not undertake the effort to examine the statutory construction of 8 U.S.C. Sec. 1225(b)(2) and Sec. 1226(a), and instead extrapolated a more specific meaning from the word "primarily" in the *Jennings* decision than what the Court had intended. The question the

Jennings Supreme Court sought to address was whether 8 U.S.C. Sec. 1225(b)(2) permitted time limitations on detention under certain statutes in the INA. 583 U.S. at 282. The Court in *Jennings* was not examining whether 8 U.S.C. Sec. 1225(b)(2) is properly applied to a person who is not "seeking admission" at the border, and instead was describing the statute's applicability in broad strokes to explain that there were no time limitations included in that particular statute. *Id.* at 297. Because the Louisiana Western District Court did not articulate in its decision that it made its own examination of the statutes in question, and instead relied on dicta in *Jennings* to make its conclusion, the court should find the decision in *Sandoval* to not be persuasive, and instead find other district courts' decisions, which did undertake that examination, to be more persuasive.

d. Several district courts that have undertaken their own examination of the text for the INA at 8 U.S.C. Sec. 1225 and Sec. 1226 have found that the subsection requiring mandatory detention in 8 U.S.C. Sec. 1225(b)(2) is limited to persons "seeking admission" into the United States. Those decisions should be viewed as persuasive in this case.

The Texas Southern District in *Padron Covarrubias v. Vergara*, articulated its own examination of the two statutes in question—8 U.S.C. Sec. 1225 and Sec. 1226—and found Sec. 1225(b)(2) to apply to applicants for admission who are "seeking admission." No. 5:25-CV-112, 2025 WL 2950097, at *3. The court in that case stated:

> When two different phrases are used in a statute, "a variation in terms suggests a variation in meaning." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 170 (2012) (explaining the "Presumption of Consistent Usage" and noting that "where the document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea"). Thus, to fit within Section 1225(b)(2)(A), a noncitizen must be both an "applicant for admission" and one who is "seeking admission." *Id.* An "applicant for admission" is "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C.

> § 1225(a)(1). However, "seeking admission" is a present-tense, or current, ongoing action, and varies materially from the passive state of being an applicant. "Words are to be given the meaning that proper grammar and usage would assign them." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 140 (2012).
>
> *Id.*, at *4.
>
> Addressing 8 U.S.C. Sec. 1226, the court stated the following:
>
> Second, reading Section 1226 to apply only to "deportable" aliens and not to "inadmissible" aliens like Padron would render several portions of the statute superfluous. If all criminal aliens were subsumed within Section 1225, there would be no need for Subsection 1226(c). Congress recently amended Section 1226 when it enacted the Laken Riley Act, codified in Subsection 1226(c)(1)(E). Laken Riley Act, Pub. L. No. 119-1, sec. 236, § 2, 139 Stat. 3, 3 (2025). Were the Court to adopt Respondents' new, expansive view of Section 1225, the Laken Riley Act would be surplusage. *See* A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 174 (2012) (explaining the Surplusage Canon: "None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence."); *see also Rodriguez*, 2025 WL 2782499, at *19 (' "[T]he Court does not lightly assume Congress adopts two separate clauses in the same law to perform the same work,' and this Court is not persuaded that Congress did so in passing the Laken Riley Act.") (quoting *United States v. Taylor*, 596 U.S. 845, 857 (2022)).
>
> *Id.*

The Georgia Middle District Court considered the statutes in question and concluded that the phrase "seeking admission" as used in Section 1225(b)(2) was intentional. *J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094, at *3 (M.D. Ga. Nov. 1, 2025) ("The Court cannot simply disregard these words as superfluous. It must assume that Congress intended for them to have a purpose."). The court stated that the statutory framework for Section 1225 supports the interpretation that Sec. 1225(b)(2) is limited to applicants for admission "seeking admission," as the overall statute focuses on inspection of noncitizens upon their arrival or upon an attempt to obtain admission after arrival. *Id.*

The California Eastern District court examining the statutes extensively found that to ignore the term "seeking admission" is to violate the statutory construction rule against "surplusage," which states that every clause and word of a statute should have meaning. *Lepe v.*

Andrews, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *5 (E.D. Cal. Sept. 23, 2025) (citing *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432, 143 S.Ct. 1720, 216 L.Ed.2d 370 (2023)). Additionally, the court in that case found that if the statute at 8 U.S.C. Sec. 1225(b)(2) were to apply to all applicants for admission, then Congress would have had no need to have enacted the Laken Riley Act, which added the new section 1226(c)(1)(E), mandating detention for all noncitizens "present in the United States without being admitted or paroled" *and* who have been "charged with, arrested for, or admits to" committing certain crimes, and thus section 1226(c)(1)(E) would be superfluous. *Id.* at *6.

The Arizona District Court, contrary to the Louisiana District Court in *Sandoval*, found that the Supreme Court decision in *Jennings* supported the conclusion that Section 1225(b)(2) was limited to those noncitizens who were "seeking admission" into the country, and Section 1226 as applying to noncitizens already living "inside the United States." *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *8 (D. Ariz. Aug. 11, 2025) ("The *Jennings* Court framed § 1225 as part of a process that 'generally begins at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible.' . . . The *Jennings* Court then describes § 1226 as governing 'the process of arresting and detaining' noncitizens who are living 'inside the United States' but 'may still be removed,' including noncitizens 'who were inadmissible at the time of entry.').

Thus, because many other courts have made the effort to make a more thorough analysis of the statutes at 8 U.S.C. Sec. 1225 and Sec. 1225, and found the subsection at Sec. 1225(b)(2) limited to applicants for admission "seeking admission" into the United States, and Sec. 1226(a) to apply to all noncitizens present in the United States, whether with legal admission or without, the Court here should find those decisions more persuasive than the decisions cited by

Respondents in their opposition to Petitioner's motion for temporary restraining order and preliminary injunction.

e. Petitioner, Mr. Cabrera-Hernandez, is subject to the detention and release laws under 8 U.S.C. Sec. 1226 and not to mandatory detention under 8 U.S.C. Sec. 1225(b)(2).

As described in his Amended Petition and in his memorandum in support of his request for temporary restraining orders and preliminary injunction, Mr. Cabrera-Hernandez was not "seeking admission" into the United States when Immigration and Customs Enforcement officials apprehended him on his way to work in San Antonio, Texas on July 26, 2025. Filing No. 2, p. 6; Filing No. 5, para. 35. He has lived and worked in the United States for 23 years, is the husband of a U.S. citizen and is the father of three U.S. citizens, two of whom are enrolled at universities. Filing No. 2, pp. 22–23; Filing No. 5, para 39. Two immigration judges agreed that the detention and release laws at 8 U.S.C. Sec. 1226(a)(1) applied in his case, that he is not subject to mandatory detention under 8 U.S.C. Sec. 1225(b)(2), found him not to be a danger to the community or a significant flight risk, and granted him release on bond. Filing Nos. 1-3, 1-6; Filing No. 2, pp. 6–7; Filing No. 5, paras. 29, 41–42.

For all the reasons described here and in his amended petition for writ for habeas corpus, and in his memorandum of support for temporary restraining orders and preliminary injunction, Mr. Cabrera-Hernandez is not subject to mandatory detention, because he was not "seeking admission" into the United States when he was arrested and detained near his home in San Antonio, Texas, more than 156 miles away from the U.S. border and more than 23 years after he entered the United States. The immigration judges in his 2013 and 2025 custody redetermination and bond hearings properly took jurisdiction over his requests, and both granted him his request for release on bond. The INA at 8 U.S.C. Sec. 1226 provided those immigration judges the

authority to do so and Respondents' efforts to eliminate that authority are unlawful and violate Mr. Cabrera-Hernandez's due process rights.

III. Respondents' claims that Mr. Cabrera-Hernandez has not demonstrated substantial threat of irreparable harm are not valid; Petitioner's prolonged unlawful detention and the violations to his liberty and due process rights have already caused irreparable harm to his emotional and psychological wellbeing.

Respondents, in their opposition to Petitioner's motion for temporary restraining orders and preliminary injunction, state that Mr. Cabrera-Hernandez has failed to meet his burden of demonstrating entitlement to emergency injunctive relief. Filing No. 15, p. 21. They made a conclusory statement that Mr. Cabrera-Hernandez has incorrectly stated that his due process rights have been violated, and that he has been unlawfully detained since August 6, 2025, and that he has been physically and mentally harmed as a result. *Id.* They reiterate that because the BIA vacated his bond order, based on its precedential decision in *Matter of Yajure-Hurtado*, that Mr. Cabrera-Hernandez is subject to mandatory detention. *Id.* In so doing, Respondents have made no arguments and made no claims describing how Mr. Cabrera-Hernandez's pleadings fail to meet his burden of demonstrating irreparable harm.

Mr. Cabrera-Hernandez reasserts that his prolonged detention, of an unknown duration, has irreparably harmed him physically and mentally, as described in his memorandum of support and in his sworn declaration. Filing No. 2, pp. 25–26; *see generally* Filing No. 2-1. He avers that the harm his family is suffering psychologically, emotionally, and financially also constitutes his own irreparable harm. *Id.* And he maintains that Respondents' violations of his right to liberty and his constitutional rights to due process have harmed him irreparably, and a temporary restraining order or preliminary injunction are necessary in order to prevent continued harm. Filing No. 2, pp. 27–28.

Respondents have made no significant arguments to the contrary and have only made conclusory statements to argue that he has not suffered any harm and will not suffer any harm. Filing No. 15, p. 21. The only argument Respondents have made is that Petitioner has no rights to liberty or due process under the law because he is subject to mandatory detention. *Id.* As described in this reply brief, in his amended petition, and in his memorandum of support, Mr. Cabrera-Hernandez is not subject to mandatory detention under 8 U.S.C. Sec. 1225(b)(2) and instead is subject to the detention and release laws under 8 U.S.C. Sec. 1226, and thus his ongoing detention when an I.J. has found him to merit release on bond has harmed him irreparably since August 6, 2025, when the I.J. ordered his release on bond.

IV. Respondents have not and will not suffer any harm and the balance of equities and public interest favor the Petitioner.

The last two factors to consider in weighing whether to grant a temporary restraining order or a preliminary injunction are (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 20 (2008). The third and fourth factors merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 L. Ed. 2d 550 (2009). Respondents claim their interest in detaining noncitizens subject to mandatory detention weigh more heavily than the harm Mr. Cabrera-Hernandez suffered from his unlawful detention. Filing No. 15, p. 21. They state that granting him his TRO would cause "further complications" when he is ordered removed. *Id.*

Mr. Cabrera-Hernandez avers that Respondents' stated interests—detaining persons subject to mandatory detention—are not valid in this case as Mr. Cabrera-Hernandez is not subject to mandatory detention. *See* Filing No. 5; Filing No. 2; § II, *supra.* Respondents' current

interpretations of the detention and release laws under the INA are unlawful. *Id.* The harms Mr. Cabrera-Hernandez has suffered from being unlawfully detained greatly outweigh Respondents' interests in unlawfully detaining him.

Their claim that "complications" would arise if or when he is ordered removed from the United States are invalid and nebulous, as they have not articulated what these inconveniences and complications are. Mr. Cabrera-Hernandez, as the husband of a U.S. citizen, whose I-130 petition for his U.S. citizen spouse visa, has an interest in cooperating with immigration officials, regardless of the outcome of his removal proceedings. Filing No. 1-13. Whether he is ordered removed or wins his appeals to remain in the United States with his wife and three children, cooperation with immigration officials will eventually permit him to come back to his family in the United States.

Thus, any "complications" from any potential re-detention would be administrative or operational. Whatever such administrative or operational complications that would arise from re-detaining noncitizens after they have been released have long been known to these agencies, which have held, released, re-detained, and deported noncitizens for more than a century. Furthermore, whatever the complications are with re-detaining previously released noncitizens were not so huge that they could not overcome them to re-detain Mr. Cabrera-Hernandez on July 26, 2025. These administrative and operational complications do not outweigh Mr. Cabrera-Hernandez's mental and physical harms from family separation, unlawful detention, restrictions to his liberty, and the violations of his due process rights.

CONCLUSION

Petitioner Lucas Cabrera-Hernandez has met his burden, demonstrating that he has substantial likelihood of success on the merits of his petition for writ of habeas corpus, that he

has substantial threat of irreparable injury, and that the balance of equities and public interest favor his release. Respondents have not demonstrated that their actions to detain him are lawful under our nation's immigration laws, and they have failed to demonstrate any public benefit that would outweigh the harm that Mr. Cabrera-Hernandez has already suffered and will suffer. For these reasons, Mr. Cabrera-Hernandez beseeches the Court to grant his motion for temporary restraining order or preliminary injunction and order his immediate release from custody.

Respectfully submitted,

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Dated: November 10, 2025

CERTIFICATE OF SERVICE

I certify that, on November 10, 2025, the foregoing was filed and served on all attorneys of record via the District's ECF system.

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