IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

JUCIRLEY ALVES DE ANDRADE,

Petitioner

v.

BRYAN PATTERSON, *et al.*

Respondents.

Civil Action No. 6:25-cv-01695

PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

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Pursuant to Federal Rule of Civil Procedure 65, Petitioner Jucirley Alves de Andrade ("Mr. Alves de Andrade") respectfully request that the Court issue an order restraining Respondents Bryan Patterson, Todd Lyons and Pamela Bondi from continuing to unlawfully detain him without a bond hearing.

Mr. Alves de Andrade also requests that the Court temporarily enjoin Respondents from transferring outside of the Western District of Louisiana during the pendency of these proceedings to preserve the *status quo* pending further briefing and a hearing on this matter. Mr. Alves de Andrade's motion is supported by the accompanying Memorandum of Law in Support of Motion for a Temporary Restraining Order.

As explained in the accompanying memorandum, Mr. Alves de Andrade is likely to succeed on his claims that Respondents, by continuing to detain him without providing him an opportunity to seek bond in a hearing before a neutral decisionmaker, violated his rights under the Immigration and Nationality Act and Fifth Amendment of the United States Constitution.

As to irreparable harm, Mr. Alves de Andrade will remain unlawfully detained and separated from family absent an injunction. The public interest lies in discouraging unlawful government detention.

Counsel for Mr. Alves de Andrade provided notice of his intent to file this application to counsel for Respondents at the U.S. Attorney's Office for the Western District of Louisiana. For the reasons stated above and in the accompanying documents, Petitioners respectfully request that this Court grant the motion for temporary restraining order.

Dated: November 5, 2025

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(d) and LR 65.1, I hereby certify that on November 5, 2025 at 12:50 p.m., I emailed copies of the petition in this case along with the instant temporary restraining order motion and memorandum to Civil Chief of the U.S. Attorney's Office for the Western District of Louisiana, Shannon Smitherman, at shannon.smitherman@usdoj.gov and informed Chief Smitherman of the imminent filing of the instant motion.

Dated: November 5, 2025

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PETITIONER'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

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INTRODUCTION

Petitioner Jucirley Alves de Andrade ("Mr. Alves de Andrade") moves for a temporary restraining order ("TRO") against Respondents-Defendants ("Respondents") pursuant to Rule 65 and the All Writs Act. Mr. Alves de Andrade is a civil immigration detainee in Immigration and Customs Enforcement ("ICE") custody. The Department of Justice ("DOJ") denies Mr. Alves de Andrade a bond hearing under its novel, erroneous interpretation of the Immigration and Nationality Act ("INA"). The DOJ's interpretation directly opposes the INA itself and the Fifth Amendment.[1] Petitioner therefore requests that the Court enjoin Respondents from transferring Petitioner outside of the Court's jurisdiction and order that Respondents provide a bond hearing within seven days.

ICE continues to detain Mr. Alves de Andrade despite his apprehension in the interior of the United States, numerous family and community ties and lack of criminal convictions. The DOJ

[1] Mr. Alves de Andrade does not seek a TRO with respect to his Administrative Procedures Act claim (Count Three).

recently instructed Immigration Courts to deny bond hearings to anyone who has not been formally admitted to the United States. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA 2025). According to DOJ, Mr. Alves de Andrade is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because he is "seeking admission" despite having lived in the United States since May of 2021.

The DOJ's novel interpretation is incorrect as § 1225 applies only "at the Nation's borders and ports of entry." *Jennings v. Rodriguez,* 583 U.S. 281, 287 (2018). Mr. Alves de Andrade's detention is actually governed by the "default" detention provision for people "already in the country," 8 U.S.C. § 1226. *Id.* at 289. Those detained under §1226 are entitled to bond hearings. *Id.* at 303. A century of executive practice and the INA's text and legislative history demonstrate that the old interpretation is the correct one.

Absent this Court's intervention, Mr. Alves de Andrade will remain unlawfully detained and separated from his family without an opportunity to make his case for bond. The public interest lies in discouraging unlawful government detention like the detention of Mr. Alves de Andrade. As such, this Court should grant the instant TRO motion.

FACTUAL BACKGROUND

Mr. Alves de Andrade lived in the United States for over two years before ICE arrested him. He entered the United States in May of 2021. Verified Petition for Writ of Habeas Corpus ("Pet.") ¶ 22. He has no criminal convictions. *Id.* ¶ 22. He has spent his time in the United States working to support his wife and U.S. citizen daughter. *Id.* ¶ 22.

On September 12, 2025, ICE arrested Mr. Alves de Andrade while exiting a Home Depot in Avon, Massachusetts. *Id.* ¶ 23. Since then, Mr. Alves de Andrade's family has struggled to afford mortgage and pay their bills, especially after Mr. Alves de Andrade's wife suffered a stroke

on October 22, 2025, and is unable to work. *Id.* ¶¶ 23, 25. Their future living situation is uncertain without Mr. Alves de Andrade's income as he is the sole provider for the family. *Id.* ¶ 26

On September 5, 2025, Respondent Bondi, through the Board of Immigration Appeals ("BIA"), issued *Yajure Hurtado,* which purports to subject any noncitizen who has not been formally admitted to the United States to mandatory detention. 29 I&N Dec. at 228. Since then, DOJ has refused to provide bond hearings to these detained noncitizens. *See e.g. Lopez-Arevelo v. Ripa,* No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025); *Alvarez Puga v. Assistant Field Off. Dir., Krome North Serv. Processing* Ctr., No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at *5 (S.D. Fla. Oct. 15, 2025).

ARGUMENT

A movant seeking a TRO must establish that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Mr. Alves de Andrade is likely to succeed on the merits. DOJ's refusal to provide bond hearings to unadmitted noncitizens apprehended in the interior of the United States like Mr. Alves de Andrade violates 8 U.S.C. § 1226. The plain language and legislative history of § 1226, canons of statutory construction, longstanding executive practice, and the structure of § 1225 demonstrate that § 1226 rather than § 1225 controls Mr. Alves de Andrade's detention. Mr. Alves de Andrade is also likely to succeed because holding him without an individualized bond hearing violates his procedural due process rights. Mr. Alves de Andrade has significant interests in freedom from detention and family unity. An individualized hearing would greatly reduce the chances of erroneous deprivation of those interests. The public's interest lies in remedying unlawful

deprivations of liberty and the burden to Respondents of providing hearings is low as it has routinely provided such hearings for a century. These continuing violations and forced separation of Mr. Alves de Andrade's family constitute irreparable harm. The government and public have no interest in continuing Mr. Alves de Andrade's unlawful detention. As such, the TRO should issue.

I. This Court Has Jurisdiction Over Mr. Alves de Andrade's Motion

The Court has ample authority under 28 U.S.C. § 2241 and under Rule 65 of the Federal Rules of Civil Procedure to order bond hearings—a remedy that has regularly been ordered by this Court. Habeas corpus invests in federal courts broad, equitable authority to "dispose of the matter as law and justice require," 28 U.S.C. § 2243, as the "very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 292 (1969).

This Court has jurisdiction over Mr. Alves de Andrade's statutory and due process claims he does not challenge any discretionary decision, but rather whether Respondents have the legal authority to detain him without a bond hearing. *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *2 (W.D. La. Aug. 27, 2025). Rule 65 provides this Court jurisdiction to issue a TRO requiring bond hearings *Id.* at *4.

II. Petitioner Is Likely to Succeed on the Merits

A. Mr. Alves de Andrade's Statutory Claim is Likely to Succeed

A movant is not required to show entitlement to the relief sought in the underlying matter. *See Janvey v. Alguire,* 647 F.3d 585, 595–96 (5th Cir. 2011). Rather, the movant need only demonstrate "a *prima facie* case." *Id.* When government detention violates a federal statute, that detention is unlawful and must be remedied by a court by granting a habeas writ. *See Tran v. Gonzales*, 411 F. Supp. 2d 658, 670 (W.D. La. 2006), *aff'd sub nom. Tran v. Mukasey*, 515 F.3d

478 (5th Cir. 2008). Here, Mr. Alves de Andrade's detention is governed by 8 U.S.C. § 1226(a), which requires DOJ to provide noncitizens with a bond hearing. DOJ, in this case, refuses to do so. As such, detention is unlawful under § 1226(a).

The detention of noncitizens in removal proceedings who were not apprehended on the border is governed by 8 U.S.C. § 1226. Noncitizens detained under § 1226, except those who have certain criminal histories, are entitled to individualized determinations concerning their eligibility for release during the pendency of removal proceedings. *See Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025).

Respondent Bondi, however, has denied Mr. Alves de Andrade an individualized determination through the BIA's *Yajure Hurtado* decision. 29 I&N Dec. at 228. The essential holding of the BIA's decision is that all people who enter the United States without inspection are "applicants for admission" and are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). *Id.*[2]

The section relied upon by Respondents to detain Mr. Alves de Andrade without a bond hearing reads, "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for [removal proceedings]." 8 U.S.C. § 1225(b)(2)(A). In turn, 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).

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[2] An avalanche of courts examining *Yajure Hurtado* have found that the decision was not entitled to deference and that its holding was incorrect. *See* Memorandum Order, *Ventura Martinez v. Trump,* No. 3:25-cv-01445-JE-KDM, Dkt. 17 at *2 (W.D. La. Oct. 22, 2025)*; Buenrostro-Mendez v. Bondi,* No. CV H-25-3726, 2025 WL 2886346, at *3 n.3 (S.D. Tex. Oct. 7, 2025) (collecting cases).

On the other hand, § 1226 provides that any noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). In addition, "[e]xcept as provided in subsection (c)," DOJ may release such noncitizens on bond. *See* 8 U.S.C. § 1226(a)(1)-(3). Mr. Alves de Andrade's ongoing detention is governed by 8 U.S.C. § 1226(a) and not 8 U.S.C. § 1225(b)(2)(A). The plain language of § 1226, implications of the statutory structure of § 1226(c)'s mandatory detention provisions, a century of executive practice, § 1226's legislative history, and § 1225's structure all indicate that § 1225 applies here.

1. The Plain Language of § 1226(a) Entitles Mr. Alves de Andrade to a Bond Hearing

The plain text of § 1226 demonstrates that it applies to Mr. Alves de Andrade. Subsection a of the statute authorizes bond hearings for noncitizens "arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Section 1226(c) exempts discrete categories of noncitizens with certain criminal histories from being released. *See* 8 U.S.C. § 1226(c)(1)(A), (C). Decisions about whether a noncitizen will be removed are made in removal proceedings in which Immigration Courts "determine[] whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States." 8 U.S.C. § 1229a(a)(3). Section 1226(a) is the "default" detention authority by which DHS may detain a noncitizen during removal proceedings. *Jennings*, 583 U.S. at 298.

In this way, section 1226(a) references § 1229a(a)(3). And § 1229a(a)(3) contemplates that removal proceedings determine whether noncitizens not admitted to the United States "may be admitted." The Supreme Court endorsed this interpretation in *Jennings*. 583 U.S. 281 (2018). The Court explained § 1226 is the statute that authorizes detaining people "already in the country," explicitly distinguishing them from "aliens seeking admission into the country" who are detained under § 1225. *Id.* at 289. Section 1225, the Court found, "applies primarily to aliens seeking entry

into the United States" who claim fear of return to their home country at a United States border. *Id.* at 297. This Court has repeatedly followed the Supreme Court's interpretation and found that petitioners who were "already in the country" merited bond hearings under § 1226(a). *See Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Lopez Santos,* 2642278, at *5; *Ventura Martinez,* No. 3:25-cv-01445-JE-KDM, Dkt. 17 at *6. Other districts courts too have almost unanimously found that the text of the INA supports a finding that § 1226 rather than § 1225 applies to noncitizens in Mr. Alves de Andrade's situation. *See Buenrostro-Mendez*, 2025 WL 2886346, at *3 (collecting cases). We urge the Court to do the same here.

2. Canons of Statutory Construction Demonstrates Mr. Alves de Andrade is Entitled to a Bond Hearing

Recent amendments to § 1226 reinforce that it governs Mr. Alves de Andrade's detention. The Laken Riley Act ("LRA") added language to § 1226 that directly references people who have entered without inspection and who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, people with certain criminal histories who are charged by the Department of Homeland Security ("DHS") of being inadmissible to the United States any of two specified grounds are now subject to mandatory detention. *See* 8 U.S.C. § 1226(c)(1)(E). Their two inadmissibility grounds are § 1182(a)(6)(A) for being "present in the United States without being admitted or paroled, or… arriv[ing] in the United States at any time or place other than as designated by the Attorney General" and § 1182(a)(7)(A) for lacking valid documentation to enter the United States "at the time of application for admission" and have certain criminal histories are subject to § 1226(c)'s mandatory detention provisions. *Id.* By explicitly naming these grounds, both of which cover noncitizens who DHS has not admitted, Congress reaffirmed that § 1226 applies to unadmitted noncitizens.

To expound, "when Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). As such, the fact that "Congress specifically carved out categories of inadmissible noncitizens from § 1226(a)'s discretionary detention framework logically implies that Congress intended inadmissible noncitizens outside of those categories… to come within that framework." *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *8 (D.N.H. Sept. 8, 2025); *see also Gomes v. Hyde,* No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025).

Other canons support § 1226's applicability to Mr. Alves de Andrade as well. First, "a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous." *Clark v. Rameker*, 573 U.S. 122, 131 (2014) (internal citations omitted). If, as *Yajure Hurtado* claims, "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. Specifically, the LRA extended mandatory detention to noncitizens "present in the United States without being admitted or paroled" or "at the time of application for admission" accused or convicted of specified criminal offenses. 8 U.S.C. §§ 1226(c)(1)(E); 1182(a)(6)(A); 1182(a)(7)(A). "But if all such persons were already subject to mandatory detention under § 1225(b)(2)(A), then § 1226(c)(1)(E) would be meaningless." *Jimenez*, 2025 WL 2639390, at *9.

Relatedly, "[w]hen Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect." *Stone v. Immigration and Naturalization Serv.*,

514 U.S. 386, 397 (1995). If § 1225(b)(2)(A) already subjected unadmitted noncitizens to mandatory detention, Congress would have no reason to pass a statute that subjects unadmitted **criminal** noncitizens to mandatory detention. *See Diaz Martinez v. Hyde, No.* CV 25-11613-BEM, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) ("If... 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). This canon also supports § 1226's applicability here. As discussed in subsection 3 below, the executive branch has granted unadmitted noncitizens apprehended in the interior of the United States bond hearings for over a century. When Congress amended § 1226(c) this year, it did so with this history and attendant case law presuming that such noncitizens are entitled to such bond hearings in mind. As such, Congress intended that § 1226 continue to apply moving forward. *Rodriguez Vazquez*, 779 F. Supp. 3d at 1259.

3. Longstanding Executive Practice Confirms that § 1226(a) Governs Mr. Alves de Andrade's Detention

A "longstanding 'practice of the government'…can inform [a court's] determination of 'what the law is.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (quoting *N.L.R.B. v. Noel Canning*, 573 U.S. 513, 525 (2014)). Conversely, 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).

The government has conceded in prior oral argument that "DHS's long-standing interpretation has been that 1226(a) [discretionary detention] applies to those who have crossed

the border between ports of entry and are shortly thereafter apprehended." *Roa v. Albarran*, No. 25-CV-07802-RS, 2025 WL 2732923, at *4 (N.D. Cal. Sept. 25, 2025) (citing Solicitor General, Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022)). Decades of \agency administrative decisions and regulations have confirmed that § 1226 governs the detention of those arrested within the United States. Twenty-eight years ago, the DOJ explained in the federal register that, "**[d]espite being applicants for admission**, aliens who are present without having been admitted (formerly referred to as aliens who entered without inspection) will be eligible for bond." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (emphasis added). The agency also stated that "[i]nadmissible aliens, except for arriving aliens, have available to them bond." *Id.* In the following decades, the relevant regulations are unchanged. *Compare* 63 Fed. Reg. 27441, 27448 (May 19, 1998), *with* 8 C.F.R. § 1003.19(h)(2). Even today, the DOJ's bond jurisdiction regulation only limits the Immigration Court of jurisdiction over noncitizens subject to § 1226(c)'s criminal grounds. *See* 8 C.F.R. § 1003.19(h)(2).

At least fifty-two years of BIA decisions also confirm that noncitizens who entered without inspection and have not been admitted have regularly been granted bond hearings. *See e.g. Matter of Toscano-Rivas et al.*, 14 I&N Dec. 523, 551 (BIA 1973). These bond hearings have continued unabated until 2025. *See e.g. Matter of Velasquez,* 19 I&N Dec. 377, 379 (BIA 1986); *Matter of Aguilar-Aquino*, 24 I&N Dec. 747, 748 (BIA 2009); *Matter of Akhmedov,* 29 I&N Dec. 166, 166-67 (BIA 2025). As such, longstanding executive practice affirms § 1226(a)'s applicability to unadmitted noncitizens. *See Rodriguez Vazquez,* 779 F.Supp.3d at 1261; *Diaz Martinez*, 2025 WL 2084238, at *8.

4. The Legislative History Demonstrates that § 1226(a) Governs Mr. Alves de Andrade's Detention

The current iteration of § 1226(a) was intended to "restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *See Rodriguez Vazquez,* 779 F. Supp. 3d at 1260 (quoting H.R. Rep. No. 104-469, at 229 (1996)). Specifically, Congress made clear the statute "restates the current provisions ... regarding the authority ... to arrest, detain, and release on bond an alien." H.R. Rep. No. 104-469, pt. 1, at 229 (1995).

The existing provisions before the 1996 passage of the current statute did not subject unadmitted noncitizens to mandatory detention. *See* 8 U.S.C. § 1252(a) (1994). This has been the case for over a century. *See* 34 Stat. 904-05, § 20 (1907); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994).

Had Congress intended to subject millions of people to mandatory detention by passing § 1226, it would have explicitly said so. *See Whitman v. Am. Trucking Ass'ns,* 531 U.S. 457, 468 (2001). Because unadmitted noncitizens "were entitled to discretionary detention under [§] 1226(a)'s predecessor statute and Congress declared its scope unchanged ... this background supports" the position those noncitizens are "subject to discretionary detention" under § 1226. *Rodriguez Vazquez,* 779 F.Supp.3d at 1260.

5. The Statutory Structure and the Textual Limitations of § 1225 Demonstrate that it Does Not Apply to Mr. Alves de Andrade

The statutory structure also strongly supports the long-accepted interpretation that § 1226(a) applies to Mr. Alves de Andrade. "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).

The title of a statue, as well, may assist a court in divining the statute's meaning. *See Dubin v. United States*, 599 U.S. 110, 120–21 (2023).

The text of § 1225 demonstrates that it does not apply to the unadmitted noncitizens arrested within the United States. In its title, the statute makes clear that it concerns "inspection" and "expedited removal of inadmissible arriving aliens." 8 U.S.C. §1225. Subsection (b)(1) of the statute encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible" for having misrepresented information to an inspecting officer or for lacking documents to enter the United States. 8 U.S.C. §1225(b)(1). DOJ does not assert that that 8 U.S.C. §1225(b)(1) applies to people like Mr. Alves de Andrade. It relies, rather, on 8 U.S.C. §1225(b)(2) to deny him a bond hearing. *See Yajure Hurtado*. 29 I&N Dec. at 228.

Section 1225(b)(2) is 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 aliens." 8 U.S.C. §1225(b)(2). The subsection further specifies that it applies only to "applicants for admission" who are "seeking admission." *Id.* By limiting § 1225(b)(2)'s scope to those "seeking admission," Congress established it did not intend to sweep up noncitizens who previously entered and now reside in the United States. One district court illustrated this limitation:

> [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 v. Francis, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025). Or, as this Court recently held, a noncitizen who has lived in the United States has not

"arrived (think Section 1225) in the United States, and he has instead been present (think Section 1226) ever since." *Ventura Martinez,* No. 3:25-cv-01445-JE-KDM, Dkt. 17 at *6. This was also the government's position until recently, arguing in previous litigation that "seek[ing] admission' ... entails affirmative actions to gain authorized entry." Br. for Fed. Appellees, *Crane v. Johnson*, No. 14-10049, 2014 WL 4960589, at *14 (5th Cir. Sept. 29, 2014). Section 1225(b)(2), therefore, requires that a person be both an "applicant for admission" and "also [be] doing something" post= arrival in an attempt to obtain authorized entry. *Diaz Martinez*, 2025 WL 2084238, at *6. Mr. Alves de Andrade was not applying for admission, he was living in the United States with his family.

Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," *i.e.,* "the case of [a noncitizen] . . . who **is arriving** on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores § 1225's focus on presently arriving at the United States' borders. Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival as it repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4), and sets out procedures for "inspection[s]" of people "arriving in the United States," 8 U.S.C. § 1225(a)(3), (b)(1), (b)(2), (d). For the reasons above, applying to noncitizens apprehended within the United States "impermissibly expands the scope of the statute beyond the ordinary meaning of its text." *Guerrero Orellana v. Moniz,* No. 25-CV-12664-PBS, 2025 WL 2809996, at *7 (D. Mass. Oct. 3, 2025).

B. Mr. Alves de Andrade's Procedural Due Process Claim is Likely to Succeed

Mr. Alves de Andrade's due process claim is likely to succeed because Respondents arbitrarily and without legal authority deprived him of an opportunity to be heard about whether his civil detention is necessary. "Freedom from imprisonment—from government custody,

detention, or other forms of physical restraint—lies at the heart of the liberty that [Due Process] Clause protects." *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). At its core, due process requires "that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it." *Mathews v. Eldridge,* 424 U.S. 319, 348-49 (1976). In determining the amount of process due, courts balance (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.*; *see also Maniar v. Warden Pine Prairie Corr. Ctr.*, No. 6:18-CV-00544, 2018 WL 11544220, at *2 (W.D. La. July 11, 2018) (applying *Mathews* in an immigration detention context).

Respondents' continued detention of Mr. Alves de Andrade without bond hearing violates his procedural due process rights. His private interest in his liberty is high. The lack of bond hearings carries a high risk of erroneous deprivation of his liberty. The government's interest in maintaining the current procedures is minimal as it has provided such hearings for over a century. As such, Respondents have violated Mr. Alves de Andrade's Fifth Amendment rights,

1. Mr. Alves de Andrade Has a Significant Interest in Release

Mr. Alves de Andrade's liberty interest is significant as "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Detained noncitizens also have a significant interest in family integrity. *See Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) ("[T]he right to rejoin…immediate family…ranks high among the interests of the individual."); *Landon v. Plasencia,* 459 U.S. 21, 34 (1982). Civilly detained persons also have an interest in non-punitive

conditions of confinement. *Peregrino Guevara v. Witte*, No. 6:20-CV-01200, 2020 WL 6940814, at *6 (W.D. La. Nov. 17, 2020), *report and recommendation adopted*, No. 6:20-CV-01200, 2020 WL 6929700 (W.D. La. Nov. 24, 2020),

DOJ's refusal to provide bond hearings keeps Mr. Alves de Andrade detained and away from his wife, U.S. citizen daughter and son. *See* Pet. ¶¶ 22, 24, 26. He is detained in punitive conditions at Pine Prairie ICE Processing Center. Those detained there are denied basic medical care and sanitary living conditions. *Id.* ¶ 28. Some face unjustified solitary confinement and detainees' deaths while under ICE's custody in this fiscal year are already three times as many as in 2023. *Id.* As such, Mr. Alves de Andrade's private interest is strong.

2. The Risk of Erroneous Deprivation of Mr. Alves de Andrade's Interests is High

The risk of erroneous deprivation without a bond hearing is high. Because "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," mandatory detention in situations other than those explicitly carved out by Congress "turns these well-established procedural principles on their heads and carries a significant risk of erroneous deprivation." *Martinez*, 2025 WL 2598379, at *3 (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)). Of course, the Government has "a generalized interest in ensuring noncitizens appear for their removal hearings and do not pose a risk to the communities in which they live." *Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *6 (W.D. Tex. Oct. 16, 2025).

However, detention without hearing means that noncitizens are not provided "an individualized assessment of the necessity of their detention." *Lopez-Arevelo*, 2025 WL 2691828, at *11. This lack of protection runs a high risk of depriving non-dangerous persons who present minimal flight risks of their liberty. *Id.* In other words, "absent a pre-detention hearing in front of a neutral arbiter, the risk of erroneous deprivation is high." *Valencia Zapata v. Kaiser,* No. 25-CV-

07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025); *see also Hernandez Fernandez v. Vergara,* No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *9 (W.D. Tex. Oct. 21, 2025).

Additional safeguards would reduce the risk of erroneous deprivation as a bond hearing "will allow an immigration judge conducting a bond hearing to make a determination on specific facts whether continued detention is necessary to ensure presence at removal hearings and safety for the community." *Vieira*, 2025 WL 2937880, at *7. A bond hearing therefore would give a noncitizen "the opportunity to be heard and receive a meaningful assessment of whether he is dangerous or likely to abscond" and would therefore "greatly reduce the risk of an erroneous deprivation of his liberty." *Lopez-Arevelo*, 2025 WL 2691828, at *11.

3. The Burden of Additional Safeguards is Low

The third *Mathews* factor demands consideration of the "administrative burden and other societal costs that would be associated with requiring" additional process. 424 U.S. at. 347. Given the long history of conducting bond hearings for noncitizens, the incremental burden in this case is "minimal" and "cannot be terribly burdensome." *Lopez-Arevelo*, 2025 WL 2691828, at *11; *see also Singh v. Andrews*, No. 25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025) ("In immigration court, custody hearings are routine and impose a 'minimal' cost.").

Moreover, the Government, in a recent analogous case has conceded that it "has conducted such hearings for the past thirty years until a change in the agency's interpretation of the law." *Vieira*, 2025 WL 2937880, at *6. As detailed above, the Government has likely conducted these hearings for over a century. Government concerns about flight risk and dangerousness can also be ameliorated by presenting evidence of those concerns at an individualized hearing. *Id.*

Though the government sometimes has a legitimate interest detention, "the public interest weighs against detention without a hearing" because "'unnecessary detention' of noncitizens

'imposes substantial societal costs.'" *Chogllo Chafla v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2688541, at *11 (D. Me. Sept. 22, 2025) (quoting *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021)). These costs include the separation of families, the removal of "breadwinners, caregivers, parents, siblings and employees" from the community, and economic detriment to communities from which noncitizens are removed. *Hernandez-Lara*, 10 F.4th at 33.

Mr. Alves de Andrade himself does not present any danger. He has no criminal convictions. Pet. ¶ 22. Even if there were concerns regarding dangerousness, an Immigration Court is best situated to weigh such concerns in an individualized hearing. *See also Romero-Nolasco v. McDonald*, No. 25-CV-12492-MJJ, 2025 WL 2778036, at *3 (D. Mass. Sept. 29, 2025).

Mr. Alves de Andrade has extensive family ties in the United States and a pathway to permanent immigration status once his twenty-year-old U.S. citizen daughter turns twenty-one. *Id.* ¶ 22. And any concerns of flight may be addressed at a bond hearing at which an Immigration Court considers whether a financial bond or "alternatives to detention could sufficiently mitigate that risk." *Maniar*, 2018 WL 11544220; *see also Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (finding that "due process likely requires consideration of financial circumstances and alternative conditions of release" in Immigration Court bond proceedings). As such, the public would only be minimally burdened by providing bond hearings in this case. Because all three *Mathews* factors favor an individualized hearing, this Court should join a growing number of jurisdictions that have found that deprivation of bond hearings for unadmitted noncitizens arrested within the United States likely violates the Fifth Amendment's procedural due process guarantee. *See Hernandez Fernandez*, 2025 WL 2976923, at *10 (collecting cases).

III. Mr. Alves de Andrade and His Family Will Suffer Irreparable Harm Without a TRO

Preventing irreparable harm is the "central purpose of a preliminary injunction." *Parks* v. *Dunlop*, 517 F.2d 785, 787 (5th Cir. 1975). As such, an injunction should usually issue if "the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered." *Monumental Task Comm., Inc. v. Foxx*, 157 F. Supp. 3d 573, 582–83 (E.D. La. 2016), *aff'd sub nom. Monumental Task Comm., Inc. v. Chao*, 678 F. App'x 250 (5th Cir. 2017) (quotations omitted). The Fifth Circuit requires only a "substantial threat" of irreparable injury, which is defined as "harm for which there is no adequate remedy at law." *DSC Commc'ns Corp. v. DGI Techs., Inc.*, 81 F.3d 597, 600 (5th Cir.1996).

Where "an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Book People, Inc. v. Wong,* 91 F.4th 318, 340–41 (5th Cir. 2024). This Court recently held in identical contexts to this case that the "unconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm." *Kostak*, 2025 WL 2472136, at *3; *see also Ventura Martinez,* No. 3:25-cv-01445-JE-KDM, Dkt. 17 at *6 Courts may also consider reasonable fears of medical and emotional decline of family members. *Martinez*, 2025 WL 2598379, at *5.

Mr. Alves de Andrade would suffer irreparable harm absent this Court's immediate intervention. For the reasons detailed above, Mr. Alves de Andrade's continued detention without a bond hearing is unconstitutional. Continued detention would also subject Mr. Alves de Andrade's family to irreparable harm. Without an individualized hearing, Mr. Alves de Andrade's family would be deprived of its breadwinner for the foreseeable future. Pet. ¶ 24. Because of Mr. Alves de Andrade's detention and his wife's recent stroke and inability to work, the family has been subject to extreme financial and emotional strain. *Id.* ¶¶ 25, 26. As such, Respondents' deprivation

of Mr. Alves de Andrade's liberty and the toll of further unlawful detention on his family satisfies the irreparable harm standard.

IV. The Balance of the Equities and the Public Interest Favor a TRO

Where the government is a party to the case, the third and fourth injunction factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The public interest is served by the protection of constitutional rights. *See Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996)., the public interest lies in requiring "the Government to ensure compliance with its own laws." *Kostak*, 2025 WL 2472136, at *4. This Court recently held that the threatened injury of the noncitizen's "continued detention without a bond hearing in violation of her Fifth Amendment rights" and "far outweighs the burden to Respondents of conducting a bond hearing." *Id.* In addition, "the public has no interest in incarcerating people who have no basis to be detained." *Ventura Martinez,* No. 3:25-cv-01445-JE-KDM at *6.

This standard also applies in Mr. Alves de Andrade's case. The Court must weigh the unlawful detention of Mr. Alves de Andrade against the minimal governmental burden of providing bond hearings, the type of bond headings it has provided for a century to similarly situated individuals. As in *Kostak* and *Ventura Martinez*, the scale tips in favor of preventing unlawful detention.

Additionally, the public has little interest in depriving Petitioner of a bond hearing because the Immigration Court is required to find that "release would not pose a danger to other persons or property" before granting bond. 8 C.F.R. § 1003.19(h)(3).[3] As discussed in section II, subsection B above, Petitioner is not dangerous, nor does he present an unredeemable flight risk. Given his

[3] The "vast majority…of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." *Lopez-Arevelo*, 2025 WL 2691828, at *12; *see also Vieira*, 2025 WL 2937880, at *7 (collecting cases). This Court should do the same here.

equities and the strong public interest in assuring that the government follows the law and does not detain people illegally, the public interest lies in providing him a bond hearing.

V. Mr. Alves de Andrade's Request Waiver of Rule 65(c) Security.

Mr. Alves de Andrade requests that the Court exercise its authority to waive Rule 65(c)'s security requirement. The Court may waive security in its discretion. *Kostak*, 2025 WL 2472136, at *4. In this case, Respondents will not incur any costs or damages if the requested relief is granted in this case. Therefore, Mr. Alves de Andrade requests that the Court waive any security.

CONCLUSION

Respondents' detention of Mr. Alves de Andrade without bond hearings violates the INA and Fifth Amendment. Mr. Alves de Andrade and his family will suffer irreparable harm should detention continue. The public's interest weighs against unlawful detention. As such, the Court should enjoin Respondents from continuing to detain Mr. Alves de Andrade without providing a bond hearing.

Dated: November 5, 2025.

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