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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF ARIZONA**
**PHOENIX, ARIZONA**

Marco Antonio Solorzano Zepeda

Petitioner,

v.

Kristi Noem, Secretary, U.S. Department of Homeland Security; Pamela Bondi, Attorney General of the United States, Executive Office for Immigration Review (EOIR); Corina Almeida, Chief Counsel, Immigration and Customs Enforcement (ICE), Office of Principal Legal Advisor, Florence; John Cantu, Field Office Director, ICE Enforcement and Removal Operations, Phoenix; Luis Rosa, Jr., Warden, Florence Correctional Center,

Respondents.

Case No._____

Immigration Number: A[redacted]

**PETITIONER'S EXPEDITED MOTION FOR TEMPORARY RESTRAINING ORDER/ PRELIMINARY INJUNCTION**

## I. INTRODUCTION

The above-named Petitioner Marco Antonio Solorzano Zepeda (A[redacted]), by and through undersigned counsel, respectfully requests this Honorable Court enter an emergency temporary restraining order and/or a preliminary injunction from this Honorable Court enjoining Respondents from preventing Petitioner's release on bond. Petitioner requests this Court order Respondents to accept the bond and release Petitioner from ICE

custody and restrain Respondnets from moving Petitioner out of the State of Arizona and this Judicial District pending payment of the bond and before resolution of Petitioner's concurrently filed Habeas petition.

On or about October 29, 2025, DHS took Petitioner into custody and placed him into removal proceedings by filing a Notice to Appear with the Florence Immigration Court and detaining him at the Florence Correctional Center located at 1100 Bowling Road, Florence, Arizona 85132. Petitioner requested a bond redetermination pursuant to 8 U.S.C. § 1226(a) and on November 4, 2025, the Immigration Judge ("IJ") denied Petitioner's request, but finding in the alternative "[i]f the Court had JX [jurisdiction], the Respondent has not been shown to be a danger, and flight risk could be ameliorated by a $2,500 bond." Respondents continue to detain the Petitioner in violation of law.

Respondents violated Petitioner's right to due process and took action not in accordance with the Immigration and Nationality Act ("INA") by asserting Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(A). This section of law only applies to persons "seeking admission" and does not apply to Petitioner who maintains 23 years of ongoing continuous physical presence in the United Staets and never sought admission.

Petitioner will suffer irreparable and immediate injury from continued unlawful detention unless the temporary restraining order is issued. Petitioner is likely to succeed on the merits because Respondents because there is no legal justification for Petitioner's continued detention. It is in the public interest to grant the motion and the balance of equities weigh in favor of Petitioner who is not a danger, nor a flight risk, and who has three U.S.

Citizen children. Respondents are in no way prejudiced by Petitioner's release pending resolution of the Habeas petition.

## II. LEGAL BACKGROUND

Since the implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), the Immigration Courts, BIA, and Circuit Courts regularly interpreted and implemented 8 U.S.C. § 1226(a) as the statute governing the detention and release of persons inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for having entered without inspection or admission. This has never caused any controversy or caused Congress to correct this practice and interpretation. 8 U.S.C. § 1226(a) allows the Immigration Court to hold a custody hearing and released non-citizens on parole or a bond of at least $1500. Respondents, beginning in July of 2025, engaged in a concerted effort to hold all non-citizens who entered without admission subject to 8 U.S.C. § 1225, a statute applying to arriving aliens at the port of entry, persons who entered without inspection within the 2 years prior to apprehension, and inadmissible non-citizens "seeking admission." The Respondents are unlikely to succeed because they do not adhere to the INA's statutory definition of "admission," *see Negrete-Ramirez v. Holder,* 741 F.3d 1047, 1051 (9th Cir. 2014), and Petitioner cannot be considered to be "seeking admission" 23 years after entry. *See Torres v. Barr,* 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc).

The Immigration and Nationality Act ("INA") prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge ("IJ"). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are

generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention until their removal proceedings are concluded, *see* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals "seeking admission" referred to under § 1225(b)(2). Third, the INA also provides for detention of noncitizens who have received a final order of removal from the United Staes. See 8 U.S.C. § 1231(a)-(b).

8 U.S.C. § 1225 governs the processing of arriving aliens and is not a detention statute. The only mention of "mandatory detention" comes under 8 U.S.C. § 1225(b)(1)(B)(IV) stating that applicants for admission pending asylum interviews "subject to the procedures under this clause shall be detained pending final determination of credible fear of persecution . . . ." 8 U.S.C. § 1225(b)(1)(A)(iii)(II) explicitly excludes from expedited removal non-citizens who can show they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility."

8 U.S.C. § 1225(b)(2)(A) applies to a non-citizen "who is an applicant for admission, if the examining officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under 1229a of this title." The subsection applies to an "applicant for admission," with this term being modified and limited to those "seeking admission." If applicants for admission are to always be considering seeking admission, the inclusion of the condition of those "seeking admission"

would be superfluous.

Pursuant to *Loper Bright Enterprises v. Raimondo,* 44 S. Ct. 2244(2024), this Court is not bound to the Agency's interpretation of INA. The term "applicant for admission," as defined under 8 U.S.C. § 1225(a)(1), concerns both the non-citizen who is "present in the United States who has not been admitted" and the non-citizen "who arrives" at the port of entry, otherwise known as an "arriving alien." 8 U.S.C. § 1225(b)(2)(A) explicitly applies to "applicants for admission" "seeking admission." 8 U.S.C. § 1101(a)(13)(A) defines "admission" to mean "the lawful entry of the alien *into* the United States after inspection and authorization by an immigration officer." (Emphasis added). The literal and plain meaning of "seeking admission" means the non-citizen is contemporaneously attempting to lawfully enter the United States. If inspected by the officer after entry, the 2-year physical presence exclusion under 8 U.S.C. § 1225(b)(1)(A)(iii)(II) applies.

Who then does 8 U.S.C. § 1225(b)(2)(A) apply to if not those present without admission? 8 U.S.C. §§ 1101(a)(13)(B) and (C) provide that paroled non-citizens and certain lawful permanent residents presenting themselves at the port of entry can be processed for removal proceedings under 1225(b)(2)(A) as inadmissible aliens seeking admission. *See also* 8 C.F.R. § 235.3(b)(3) ("If an alien appears to be inadmissible under other grounds contained in section 212(a) of the Act, and if the Service wishes to pursue such additional grounds of inadmissibility, the alien shall be detained and referred for a removal hearing before an immigration judge pursuant to sections 235(b)(2) and 240 of the Act for inquiry into all charges.")

Recently, in *Matter of Q. Li,* 29 I&N Dec. 66 (BIA 2025), Respondents applied

mandatory detention under 8 U.S.C. § 1225(b)(2) to applicants for admission who are "arrested and detained without a warrant *while arriving* in the United States" acknowledging the temporal limit of the phrase. (Emphasis Added).

Without directly interpreting the statutory definition of "admission", Respondents issued *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), holding that all non-citizens present without inspection, regardless of how many years they have been in the country, are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and are considered to be seeking admission in perpetuity. *Matter of Yajure Hurtado,* 29 I&N Dec. at 221, remains at odds with Ninth Circuit precedent. In *Torres v. Barr,* 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc), the Ninth Circuit provides a thorough analysis, finding that applying for admission means doing so from outside the United States or at a port of entry, seeking physical entry into the country. The *Torres* decision holds that the legal and factual understanding of seeking admission is limited in time, it cannot continue without limit once the non-citizen is already in the United States. *Id.* at 926. "Accordingly, inadmissibility must be measured at the point in time that an immigrant actually submits an application for entry into the United States." *Id; See also; Negrete-Ramirez v. Holder,* 741 F.3d 1047, 1051 (9th Cir. 2014) ("The definition refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry.")

## III. STATEMENTS OF FACTS

Petitioner is a 45-year-old single male, citizen of Mexico. Petitioner entered the United States without inspection on or about January 2002 and was never encountered by Border Patrol. He has continuously lived in the United States since that time, more than 23

years. Petitioner is eligible for relief removal in the form of cancellation of removal pursuant to INA §240A(b)(1). Prior to his detention, Petitioner resided in Phoenix, Arizona with his long-time partner and their three (3) United States Citizen children, ages 20, 13, and 12 years old. Petitioner has no criminal issues anywhere in the world. On or about September 29, 2025, Immigration and Customs Enforcement ("ICE") detained Petitioner on his way to work. Petitioner has no criminal issues anywhere in the world. Petitioner had been at liberty in the United States for over 23 years prior to his detention. On or about September 29, 2025, ICE took Petitioner into custody and placed him into removal proceedings by filing a Notice to Appear with the Florence Immigration Court and detaining him at the Florence Correctional Center located at 1100 Bowling Rd, Florence, Arizona 85132.

Petitioner requested a bond redetermination and on November 4, 2025. The Immigration Judge denied his release request based on jurisdiction, as compelled by the recent decision of *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025) ("*Matter of Hurtado")*. However, should jurisdiction be established, in the alternative, the Immigration Judge explicitly stated that "[t]he Respondent has not been shown to be a danger, and flight risk could be ameliorated by $2,5000 bond. Respondent's continue to detain the Petitioner in violation of law.

On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), implementing Respondents' concerted policy goal of holding all persons who entered without inspection subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Petitioner remains detained at the Florence Correctional Center, pending removal proceedings. Respondents unilaterally and arbitrarily have scheduled

Petitioner for expedited removal hearings, disrupting his legal defense and causing additional litigation.

## IV. STATEMENTS OF FACTS

"A plaintiff seeking a preliminary injunction 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. Natural Resources Defense Counsel Inc.,* 129 S.Ct 365, 375 (2008).

### a. Petitioner is likely to succeed on the merits of their argument that 8 U.S.C. § 1225(b)(2)(A) does not apply to him because he is not "seeking admission" as defined under the INA

Petitioner is likely to succeed on their claim that 23 years after entering the United States without inspection, he cannot be held under mandatory detention as an applicant for admission "seeking admission." "Admission" as defined in the INA under 8 U.S.C. § 1101(a)(13)(A) means "the lawful entry of the alien *into* the United States after inspection and authorization by an immigration officer." (Emphasis added). Petitioner is charged as inadmissible under 8 U.S.C. § 1158(a)(6)(A)(i) for having entered the United States without inspection. If he was seeking admission, as argued by the Respondents, then he would have been charged as such on the Notice to Appear. However, he was not. As has been the regular practice of the Court for over 28 years, the Immigration Judge held a custody redetermination under 8 U.S.C. § 1226(a), finding that if jurisdiction is established that Petitioner is neither a danger nor a flight risk and ordered his release upon the posting of a $2,500 bond.

Respondents denied Petitioner's release on the argument that he is subject to mandatory detention under the expedited removal/inspection of arriving aliens statute as

contained in 8 U.S.C. § 1225. Specifically, Respondents have engaged in a concerted effort to force ICE to argue all persons who entered the United States without admission and inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Respondents intentionally brought this argument so that they could direct EOIR, through the Board of Immigration Appeals to publish *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), holding exactly what DHS argued. This Agency precedent is without legal any persuasiveness, as it does not address the statutory definition of "admission." Respondents Kristi Noem and Pam Bondi predetermined the outcome prior to any litigation through the courts.

8 U.S.C. § 1225(b)(2)(A) states a non-citizen "who is an applicant for admission, if the examining officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, . . . shall be detained for a proceeding under 1229a of this title." The Ninth Circuit has previously held that section 1225(b)(2)(A) cannot apply to persons with long residence in the United States because there is a temporal limit to someone "seeking admission."

In *Torres v. Barr,* 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc), the Ninth Circuit provides a thorough analysis, finding that applying for admission means doing so from outside the United States or at a port of entry, seeking physical entry into the country. The *Torres* decision holds that being an application for admission is limited in time, and it cannot continue without limit once the non-citizen is already in the United States. *Id.* at 926. "Accordingly, inadmissibility must be measured at the point in time that an immigrant actually submits an application for entry into the United States." *Id; See also; Negrete-Ramirez v.*

*Holder*, 741 F.3d 1047, 1051 (9th Cir. 2014) ("The definition refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry.") By the plain meaning of the statue and the Ninth Circuit's statutory analysis, the term "seeking admission" cannot apply to a person already inside the United States for over 23 years.

In addition to the Ninth Circuit, since Respondents adopted their new policies, dozens of federal courts have uniformly rejected their newly invented misclassification as illegal and because it defies the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE, ruling that the BIA's decision is not entitled to any deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024).[1]

Pursuant to *Loper Bright Enterprises v. Raimondo,* 44 S. Ct. 2244(2024), this Court is not bound to the Agency's interpretation of INA. Even if this case is litigated on appeal,

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[1] See, e.g., *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK (S.D. Ind. Oct. 11, 2025); *B.D.V.S. v. Forestal*, No. 1:25-cv-01968-SEB-TAB (S.D. Ind. Oct. 8, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25 C 10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025) (Jenkins, J.), *H.G.V.U. v. Smith*, No. 25 C 10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2020) (Coleman, J.), *Mariano Miguel v. Noem*, No. 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025) (Alonso, J.), and *G.Z.T. v. Smith*, No. 25 C 12802 (N.D. Ill. Oct. 21, 2025) (Ellis, J.), *Corona Diaz v. Olson, et al.*, No. 25-cv-12141 (N.D. Illinois 2025), *Belsai v. Bondi, et al.*, No. 25-cv-3862 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, --- F.Supp.3d ---, 2025 WL 2712417 (N.D. Iowa Sept. 23, 2025); *Salazar v. Dedos*, No. 1:25- cv-00835-DHU-JMR, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25- cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025).

the ultimate decision of Petitioner's custody will be determined by the Ninth Circuit, but at this moment, no appeal has been filed, and Petitioner is not the party who would seek to appeal the Immigration Court's decision to grant bond. Petitioner has no other recourse.

Petitioner is likely to succeed arguing the bond is valid because the plain reading of the statute indicates he is subject to the general detention statute pursuant to 8 U.S.C. 1226(a), and not the expedited removal/inspection provisions under § 1225(b). Congress specifically excepted from the harsh provisions of § 1225(b), persons who established two years of physical presence after entering without admission. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). When persons seek admission, and they are not subject to expedited removal under § 1225(b)(1), such as inadmissible lawful permanent residents, they are then processed under § 1225(b)(2)(A). If congress wanted to subject all non-citizens inadmissible for having entered without inspection, they would have specifically stated such in § 1225, or they would have included non-citizens inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) in the enumerated list of persons subject to mandatory detention under 8 U.S.C. § 1226(c).

Finally, if the accepted widespread interpretation, practice, and implementation of releasing persons like the Petitioner under 1226(a) was not congressional intent, congress would have stepped in to clarify the law. The only indication of congressional intent concerning the custody statutes came in the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), which amended § 1226 to provide for the mandatory detention of inadmissible non-citizens with certain criminal convictions and conduct. The statute and the amendments made by the Laken Riley Act intentionally precludes some aliens inadmissible under 8 U.S.C.

1182(a)(6)(A)(i) from being granted bond. If 8 U.S.C. § 1225(b)(2)(A) clearly applied to all persons inadmissible under § 1182(a)(6)(A)(i), there would be no conceivable reason for the Laken Riley Act to include provisions specifying certain non-citizens inadmissible under § 1182(a)(6)(A)(i) arrested for shoplifting are subject to mandatory detention. By the plain reading of the statute, Petitioner who entered 23 years ago, and never sought admission, cannot be considered "seeking admission." 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner.

**b. Petitioner suffers irreparable harm from his continued unlawful detention.**

Petitioner remains detained despite the Immigration Judge alternative order that if jurisdiction is found, he can be released upon a posting of a $2,500 bond. Respondents' refusal to accept the bond and release Petitioner keeps him separated from his children and prevents him from returning to work to support his family. He is not a danger and not a flight risk, so Petitioner suffers the emotional harm of being detained without any good factual argument for why he should be detained. Should Petitioner ultimately win relief from removal, he will be personally and financially set back by the months of detention. His continued detention in a purposely accelerated deprives him of the opportunity to actively prepare for his case with counsel. If he does not win relief, he would have missed out on the opportunity to prepare and plan to return to his native country. In every way, he is prejudiced by the continued detention, and this harm cannot be undone.

**c. The balance of equities favors Petitioner.**

Respondents advance a novel argument that goes against decades of practice and

interpretation, all with the goal of subjecting millions of people like Petitioner to mandatory detention. Petitioner has accrued 23 years of continuous physical presence in the United States. This comes with establishing himself in the community, in the economy, and with his family. Respondents do not argue Petitioner poses any danger or flight risk, and if in fact not subject to mandatory detention, there will not have been any justification for the public resources used to detain Petitioner. Three U.S. citizen children await their father's release. Respondents await the outcome of their legal arguments without suffering any real prejudice.

**d. Granting the restraining order serves the public interest.**

Detaining those who pose no danger and no flight risk constitutes misuse of government and public resources. Family unity remains an important public interest as stated throughout the INA and its attending regulations. *See e.g.* 8 U.S.C. §§ 1153(a), (d), 1158(b)(3), 1182(a)(9); 8 C.F.R. §§ 212.7(e), 236, Subpart B. Releasing Petitioner back to his family and community maintains family unity, an important public interest. Treating people with dignity while they face removal proceedings engenders faith in the system that is both harsh but also provides pathways to legalization. There is merit to preventing Respondents from continuing to detain Petitioner on the basis of a novel argument not supported by decades of legal practice and interpretation. For such a dramatic shift, there has been no notice. The public interest is served by the orderly implementation of the nation's immigration laws.

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## V. CONCLUSION

Petitioner respectfully requests the Court grant their motion for temporary restraining order to restrain Respondents from detaining Petitioner while the concurrently filed habeas petition is litigated.

RESPECTFULLY SUBMITTED, this day 13th day of November 2025

Zava Immigration Law Group PLLC

s/ Jessica Anleu
Jessica Anleu
Attorney for Petitioner

**CERTIFICATE OF SERVICE**

On the 13th day of November, 2025, I, Jessica Anleu, the undersigned, served via certified U.S. Mail, the attached **PETITIONER'S EXPEDITED MOTION FOR TEMPORARY RESTRAINING ORDER/ PRELIMINARY INJUNCTION,** on each person/entity listed below addressed as follows:

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s/ *Jessica Anleu, Esq.*