

3. are not or will not be subject to mandatory detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 at the time DHS makes an initial custody determination.

Bautista, 2025 U.S. Dist. LEXIS 262265 at *84. **Petitioner meets these criteria.** ECF No. 1 at 3-4. The government has filed a notice of appeal with the Ninth Circuit in *Bautista v. United States Department of Homeland Security*, No. 25-7958 (Dec. 18, 2025). The Ninth Circuit docket shows no entry of a stay order.

Nevertheless, Respondents continue to detain Petitioner without a bond hearing. ECF Doc. 1 at 40. This Motion seeks a temporary restraining order against Respondents pursuant to Rule 65 and the All Writs Act. Petitioner is a civil immigration detainee at the Immigration and Customs Enforcement (ICE) ERO El Paso Camp East Montana, Fort Bliss, El Paso, Texas. Respondents deny Petitioner release on bond under their erroneous, new interpretation of the Immigration and Nationality Act (“INA”). The Court should order Respondents to immediately provide a Bond Hearing for Petitioner before an immigration judge.

I. INTRODUCTION

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

Under Respondents' new theory, Petitioner is now "seeking admission" and subject to mandatory detention under § 1225(b)(2) despite having lived in the country for almost 30 years. This is a sharp contrast to Respondents' decades-long practice where § 1225 applied only "at the Nation's borders and ports of entry." *Jennings*, 583 U.S. at 287.

United States District Courts in the Western District of Texas overwhelmingly agree that Respondents' position is illegal.¹ As do courts nationwide.²

¹ *Chang v. Noem*, No. SA-25-CV-1259-FB (HJB), 2025 U.S. Dist. LEXIS 260525 (W.D. Tex. Dec. 17, 2025); *Kusi v. Noem*, No. 3:25-cv-527-KC, at *2-3 (W.D. Tex. Nov. 25, 2025); *Aragones v. Noem*, No. 3:25-cv-590-KC (W.D. Tex. Dec. 5, 2025); *Garcia-Peralta v. Noem*, No. 3:25-cv-690-KC (W.D. Tex. Dec. 23, 2025); *Porrás-García v. Noem*, 3:25-cv-692-KC (W.D. Tex. Dec. 23, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232 (W.D. Tex. Sep. 21, 2025); *Martinez v. Noem*, No. 3:25-cv-430-KC, 2025 WL 2965859, at *1-5 (W.D. Tex. Oct. 21, 2025); *Lala Barros v. Noem*, No. 3:25-cv-488-KC, 2025 WL 3154059, at *1-6 (W.D. Tex. Nov. 10, 2025); *Erazo Rojas v. Noem*, No. 3:25-cv-443-KC, 2025 WL 3038262, at *1-5 (W.D. Tex. Oct. 30, 2025); *Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588, at *1-14 (W.D. Tex. Oct. 2, 2025);

² *Lepe v. Andrews*, --- F.Supp.3d ---, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Lopez v. Hardin*, 1:25-cv-830, (M.D. Fla. Sept. 25, 2025); *Roa v. Albarán*, No. 25-cv-7802, 2025 WL 2732923, at *1 (N.D. Cal. Sept. 25, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D. N.J. Sept. 26, 2025); *Savane v. Francis*, 1:25-cv-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Luna Quispe v. Crawford*, 1:25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *da Silva v. ICE*, 1:25-cv-00284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Santiago Helbrum v. Williams*, 4:25-cv-00349, WL (S.D. Iowa, Sept. 30, 2025); *Belsai D.S. v. Bondi*, 0:25-cv-3682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Rocha v. Hyde*, 25-cv-12584, 2025 WL 2807692 (D. Mass. Oct. 2, 2025); *Guzman Alfaro v. Wamsley*, 2:25-cv-01706, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025); *Ayala Casun v. Hyde*, 25-cv-427, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Guerrero Orellana v. Moniz*, 25-cv-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Elias Escobar v. Hyde*, 25-cv-12620-IT, 2025 WL 28233324 (D. Mass. Oct. 3, 2025); *Echevarria v. Bondi*, 25-cv-03252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cordero Pelico v. Kaiser*, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Artiga v. Genalo*, 25-cv-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *S.D.B.B. v. Johnson*, 1:25-cv-882, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Ledesma Gonzalez v. Bostock*, 2:25-cv-01401, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); *Mena Torres v. Wamsley*, C25 5772-TSZ, 2025 WL 2855739 (W.D. Wash. Oct. 8, 2025); *B.D.V.S. v. Forestal*, 25-cv-01968, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Eliseo A.A. v. Olson et al.*, 25-cv-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Ortiz Donis v. Chestnut*, 1:25-cv-01228, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); *Mugliza Castillo v. Lyons*, 25-cv-16219, 2025 WL 2940990 (D. N.J. October 10, 2025); *Alejandrov Olson*, 1:25-cv-02027, 2025 WL 2896348 (S.D. Ind.); *Singh v. Lyons*, 1:25-cv-01606, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025);

II. FACTUAL BACKGROUND

a. Immigration Detention's Legal Framework

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

These two provisions reflect immigration law's distinction between noncitizens arrested after entering the country (§ 1226) and those arrested while arriving in the country (§ 1225). Prior to 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), the statutory authority for custody was 8 U.S.C. § 1252(a) (1994), authorizing detention during “deportation” proceedings and release on bond. Those “deportation” proceedings governed the detention of anyone in the United States, regardless of manner of entry. IIRIRA maintained that authority for detention and release on bond at 8 U.S.C. § 1226(a). *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining the new §

Teyim v. Perry, 1:25-cv-01615, 2025 WL 2950183 (E.D. Va. Oct. 15, 2025); *Hernandez Hernandez v. Crawford*, 1:25-cv-01565-AJT-WBP, 2025 WL 2940702 (E.D. Va. Oct. 16, 2025); *Menjivar Sanchez v. Wofford*, 2025 WL 2959274 (C.D. Cal. Oct. 17, 2025); *Gonzalez v. Joyce*, 25-cv-8250 (AT), 2025 WL 2961626 (W.D.N.Y. Oct. 19, 2025); *Sanchez Alvarez v. Noem et al.*, 1:25-cv-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Polo v. Chestnut et al.*, 1:25-cv-01342 JLT HBK, 2025 WL 2959346 (E.D. Ca. Oct. 17, 2025); *Chavez v. Director of Detroit Field Office et al.*, 4:25-cv-02061-SL, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *HGVU v. Smith et al.*, 25-cv-10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025) *Da Silva v. Bondi*, No. 25-cv-12672-DJC, 2025 WL 269163 (D. Mass. Oct. 21, 2025); *Buestan v. Chu*, No. 25-16034 (MEF), 2025 WL 2972252 (D. N.J. Oct. 21, 2025); *Maldonado v. Baker*, No. 25-3084-TDC (D. Md. Oct. 21, 2025); *Gonzalez; Miguel v. Noem*, 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025); *Loa Caballero v. Baltazar et al.*, 25-cv-03120 2025, WL 2977650 (D. Colo. Oct. 22, 2025); *Lopez Lopez v. Soto*, 2:25-cv-16303, 2025 WL 2987485 (D.N.J. Oct. 23, 2025); *Nava Hernandez v. Baltazar*, 1:25-cv-030904, 2025 WL 2996643 (D. Colo. Oct. 24, 2025.)

1226(a) “restate[d] the current provisions in [then 8 U.S.C. § 1252(a)] regarding the authority ... to ... detain, and release on bond...”). The IIRIRA also enacted new mandatory detention (without bond) provisions for people apprehended on arrival at 8 U.S.C. § 1225. *See Jennings*, 583 U.S. at 303.

In implementing the IIRIRA’s detention authority, the then-INS clarified that people entering the U.S. without inspection and who were not apprehended while “arriving” would continue to be detained under § 1226(a) (formerly § 1252(a)) with access to bond. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond ... This procedure maintains the status quo.”)

b. Immigration Detention’s Legal Framework

Since IIRIRA’s passage, Respondents applied § 1226(a) to people arrested in the interior after entry without inspection. Respondents switched course and insist that § 1225(b)(2)(A) requires detention of all persons who entered the U.S. without inspection, regardless of where they were arrested or how long they have resided in the country. The change began at the Tacoma Immigration Court where IJs began denying bond to those who entered without inspection. *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1244 (W.D. Wash. 2025). Then, on May 22, 2025, the Board of Immigration Appeals (“BIA”) issued an unpublished decision affirming one Tacoma IJ’s decision denying bond pursuant to § 1225(b)(2)(A).

After the unpublished BIA decision, in July 2025, DHS “in coordination with the [DOJ]” issued a memo stating, “effective immediately, it is the position of DHS” that anyone who entered without inspection is “subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE custody”³ According to DHS, noncitizens are now “ineligible for a [bond] hearing ... and may not be released” during removal proceedings. The BIA published a precedential decision

³ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

finding the same on September 5, 2025. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). Despite the federal courts' resounding rejection of Respondents' new position, including a nationwide certified class with declaratory judgment doing the same, *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 262265 (C.D. Cal. Dec. 18, 2025), Respondents continue to apply the illegal interpretation of the INA's detention scheme. ECF Doc 1 at 40.

c. Petitioner is Ideally Qualified for Bond.

Petitioner is detained solely because of Respondents' new policy. She has lived in the United States for almost 30 years, having entered the United States without inspection in 1997. ECF Doc. 1 at 3, 41. She has not left the United States and lives in Florida with her four (4) children, all citizens of the United States. ECF Doc. 1 at 27-30. Petitioner may have relief before the Immigration Court. *See* 8 U.S.C. 1229b(b)(1), (2). Petitioner has no criminal history that subjects her to mandatory detention. In short, she is not a flight risk nor does she pose a danger to the community, i.e., she is an ideal candidate for bond.

ICE initiated removal proceedings against Petitioner in October of 2025 pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) for being present without inspection. ECF Doc. 1 at 23. After the BIA's decision in *Yajure Hurtado*, immigration judges across the country now apply Respondents' unlawful detention regime finding noncitizens like Petitioner subject to § 1225(b)(2) because Respondents allege an unlawful entry to the United States country almost thirty years ago.

III. LEGAL STANDING FOR GRANTING PRELIMINARY RELIEF

The standard for obtaining a temporary restraining order ("TRO") is the same as that for obtaining a preliminary injunction. *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985). The plaintiff must establish the following four elements to obtain a TRO: "(1) a substantial likelihood that plaintiff will succeed on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the [TRO] is not granted, (3) that the threatened injury to

plaintiff outweighs the threatened harm the [TRO] may do to defendant, and (4) that granting the [TRO] will not disserve the public interest. *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009) (quoting *Canal Authority of Florida v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974); see also *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008))

IV. LEGAL ARGUMENT – THE COURT SHOULD ORDER PRELIMINARY RELIEF

A. Petitioner is Likely to Succeed on the Merits

Respondents’ interpretation of the INA is contrary to law. Section 1225 governs individuals seeking entry at the Nation’s borders and ports of entry, where admissibility determinations occur. *Jennings*, 583 U.S. at 287, 297. By contrast, Section 1226 applies to noncitizens already present in the United States and detained pending removal proceedings. *Id.* at 289. The statutory text, interpretive canons, legislative history, implementing regulations, and decades of agency practice confirm this reading, as do consistent federal court decisions. *Supra* n. 1,2.

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

Application of § 1226(a) does not turn on whether a person was previously admitted to the country. The plain text of 8 U.S.C. § 1226(a) includes people who entered the United States without inspection. 8 U.S.C. § 1226(c)(1)(A), (D), (E). Section 1226(a), the INA’s “default” detention authority, *Jennings*, 583 U.S. at 281, applies to people detained “pending a decision on whether the [noncitizen] is to be removed,” 8 U.S.C. § 1226(a). As the statute provides, this language includes both (1) people like Petitioner who entered without inspection, were never formally admitted to the country, and thus are charged as “inadmissible” under § 1182(a)(6)(A)(i), and (2) people who were admitted and are charged as “deportable.” See *id.* § 1229a(a)(3) (removal proceedings “determine[e] whether a [noncitizen] may be admitted to the [U.S.] or, if the [noncitizen] has been so admitted, removed from the [U.S.]”) (emphasis added).

The statute's structure makes this clear. Subsection 1226(a) provides the right to bond. Subsection 1226(c) then carves out discrete categories of noncitizens subject to mandatory detention due to criminal contacts. *See, e.g., id.* § 1226(c)(1)(A), (D), (E). These carve-outs include noncitizens inadmissible for entering without inspection and who meet certain crime-related criteria. *See id.* § 1226(c)(1)(E). Because § 1226(c)'s exception expressly applies to people who entered without inspection, it reinforces the default rule: § 1226(a)'s general detention authority otherwise applies to Petitioner. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). Recent statutory amendments do the same. Congress made significant changes to § 1226 in January 2025. *See Laken Riley Act*, Pub. L. No. 119-1, 139 Stat. 3 (2025) (LRA). These amendments make people charged under § 1182(a)(6)(A)(i) for entering without inspection or (a)(7) for lacking valid documentation and who have had certain criminal encounters subject to mandatory detention under § 1226(c). 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress reaffirmed that § 1226(a) covers persons charged under § 1182(a)(6)(A) or (a)(7). “[W]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F.Supp.3d at 1256-57 (quoting *Shady Grove*, 559 U.S. at 400).

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

Finally, “[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction,” courts “generally presume[] the new provision should have been understood to work in harmony with what has come before.” *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (citation modified). This canon also supports Petitioner’s position because “Congress adopted the new amendments to Section 1226(c) against the backdrop of decades of post-IIRIRA agency practice applying discretionary detention under Section 1226(a) to inadmissible noncitizens such as [Petitioners].” *Rodriguez Vazquez*, 779 F.Supp.3d, at 1259.

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

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

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

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

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

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

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

Respondents reading of section 1225 would also render significant portions of it meaningless. Several requirements must be met for § 1225(b)(2)'s mandatory detention regime to apply. Namely, (1) an "examining immigration officer" (2) must conclude during an "inspection" (3) of an "applicant for admission" (4) who is also "seeking admission" (5) that the person "is not clearly and beyond a doubt entitled to be admitted." § 1225(b)(2)(A). Respondents' interpretation of § 1225 reads out three of those five requirements.

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

Second, it renders superfluous §1225(b)(2)(A)'s requirement that the noncitizen be "seeking admission." *Jimenez*, 2025 WL 2639390, at *8. The statute defines admission to mean "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). "While an applicant for admission has not been 'admitted' to the United States, it does not follow that an applicant for admission continues to be actively seeking . . . lawful entry." *Jimenez*, 2025 WL 2639390, at *8 (citation omitted). "If as the Government argues, all applicants for admission are deemed to be 'seeking admission' for as long as they remain applicants, then the phrase 'seeking admission' would add nothing to the provision" in § 1225(b)(2)(A). *Salcedo Aceros*, 2025 WL 2637503, at *10. Respondents' position would similarly

“read the word ‘entry’ out of the definitions of ‘admitted’ and ‘admission.’” *Chafra*, 2025 WL 2688541, at *6.

While Petitioner is not lawfully admitted, she is not actively “seeking admission i.e., seeking lawful entry . . . into the United States after inspection and authorization by an immigration officer.” *Jimenez*, 2025 WL 2639390, *8. Respondents’ reading of the statute is incorrect.

3. The legislative history further supports Petitioner’s argument.

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

Before the IIRIRA, people like Petitioner were not subject to mandatory detention under any theory. See 8 U.S.C. § 1252(a) (1994). Had Congress intended a monumental shift in immigration law, it would have clearly said so. See *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001) (finding “implausible that Congress would give to the [agency] through these modest words [such] power”). In fact, Congress said the opposite: the new § 1226(a) just “restates the current provisions . . . regarding the authority . . . to arrest, detain, and release on bond a[] [noncitizen].” H.R. Rep. No. 104-469, pt. 1, at 229. “Because noncitizens like [Petitioner] were entitled to discretionary detention under [§] 1226(a)’s predecessor statute and Congress declared its scope unchanged . . . this background supports [Petitioner’s] position that he too is subject to discretionary detention.” *Rodriguez Vazquez*, 779 F.Supp.3d at 1260.

4. Respondent’s policies violate long-standing EOIR regulations.

Respondents’ view violates EOIR’s regulations. Following the IIRIRA, EOIR explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted . . . will be eligible for bond.” 62 Fed. Reg. at 10323. In the following decades, the relevant

regulations remain unchanged. Compare 63 Fed. Reg. 27441, 27448 (May 19, 1998), with 8 C.F.R. § 1003.19(h)(2). The regulation governing IJs' bond jurisdiction still only limits an IJ's bond jurisdiction to noncitizens subject to § certain conditions irrelevant here 8 C.F.R. § 1003.19(h)(2). Regulatory "guidance and the agency's subsequent years of unchanged practice is persuasive." *Rodriguez Vazquez*, 779 F.Supp.3d at 1261. "When an agency claims to discover in a long-extant statute an unheralded power ... [courts] greet its announcement with a measure of skepticism." *Util. Air Regul. Grp. v. EPA*, 574 U.S. 302, 324 (2014)

B. Petitioner Faces Imminent, Irreparable Harm.

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

C. Threatened Injury to Petitioner Outweighs the Threatened Harm to Respondents.

Granting a bond hearing to Petitioner creates no harm to Respondents. The Immigration Judge will determine whether her release poses flight risk or danger to the community. If released on bond, Petitioner's removal case will proceed on a non-detained docket. If the Immigration Judge determines that the Petitioner is not entitled to bond, she remains detained. Denial of the bond hearing, on the other hand, deprives Petitioner of Constitutional due process. Certainly her threatened injury outweighs the "no injury" to Respondents.

D. Granting Relief Will Not Disserve the Public Interest.

In cases against the government, the balance of equities and the public interest typically merge. *See Nken v. Holder*, 556 U.S. 418, 436 (2009). The government cannot claim injury from being enjoined from engaging in unlawful conduct. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); *Wages & White Lion, Inv., L.L.C. v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. Colo. 2024) ("There is generally no public interest in ... unlawful agency action"). Here, requiring the government to comply with the law and return to its prior bond-and-detention practices causes no cognizable harm. Courts have consistently recognized that "[t]he harm to the government is minimal" when an injunction prevents unlawful detention. *Rodriguez Vazquez*, 779 F.Supp.3d at 1262. By contrast, continued enforcement of the automatic stay regulation causes significant, irreparable harm to Petitioner. Thus, both the equities and the public interest strongly favor preliminary relief.

V. CONCLUSION

Accordingly, the Court should grant a temporary restraining order (or preliminary injunction) prohibiting Petitioner's continued detention without a bond hearing. Petitioner prays for relief at law and in equity.

Date: Dec. 31, 2025

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Stephen W. Spurgin hereby certify that on December 29, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system. I also certify that I will email a copy of the foregoing to the United States Attorney for the Western District of Texas:

Mary Kruger (mary.kruger@usdoj.gov)
Chief, Civil Division
United States Attorney's Office



Stephen W. Spurgin