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17 **UNITED STATES DISTRICT COURT**
18 **FOR THE DISTRICT OF ARIZONA**
19 **PHOENIX, ARIZONA**

20 Jonathan Abdiel Sandoval Andrade;

21 Plaintiff,

22 v.

23 Kristi Noem, Secretary, U.S. Department
24 of Homeland Security (DHS); Pamela
25 Bondi, Attorney General of the United
26 States, Executive Office for Immigration
27 Review (EOIR); Christopher McGregor,
28 Acting Field Office Director, ICE
Enforcement and Removal Operations,
Phoenix Field Office; Fred Figueroa,
Warden, Eloy Detention Center,


Defendants.

Case No.

Immigration Number: 

**PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER**

I. INTRODUCTION

29 The above-named Plaintiff  by and through undersigned counsel,
30 respectfully requests this Honorable Court enter an emergency temporary restraining order
31 enjoining the Defendants from detaining Plaintiff subject to mandatory detention under 8
32 U.S.C. § 1225(b)(2)(A). Plaintiff requests this Court order Defendants release Plaintiff unless
33 they provide an individualized bond hearing within 7 days. Plaintiff also requests the Court
34 restrain Defendants from transferring Plaintiff outside the Court's jurisdiction pending the

1 Habeas petition.

2 On October 22, 2025, DHS took Plaintiff into custody and placed him into removal
3 proceedings by filing a Notice to Appear with the Eloy Immigration Court and detaining him
4 at the Eloy Detention Center located at 1705 E. Hanna Rd., Eloy, Arizona 85131. Plaintiff
5 requested a bond redetermination pursuant to 8 U.S.C. § 1226(a) and, on November 17, 2025,
6 the Immigration Judge denied the bond finding Plaintiff subject to mandatory detention. On
7 December 1, 2025, the Immigration Judge again denied Plaintiff's bond refusing to implement
8 the Central District of California's Bond Eligible Class. *See Maldonado Bautista v.*
9 *Santacruz*, No. 5:25-CV-01873-SSS-BFM, – F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D.
10 Cal. Nov. 25, 2025). Plaintiff's continued detention violates his right to release under 8
11 U.S.C. § 1226(a) and defies the Central District of California's orders regarding membership
12 to a Bond Eligible Class.

13 Defendants violated Plaintiff's right to due process and took action not in accordance
14 with the Immigration and Nationality Act ("INA") by asserting Plaintiff is subject to
15 mandatory detention under 8 U.S.C. § 1225(b)(2)(A). This section of the law only applies
16 to persons "seeking admission" and does not apply to Plaintiff who maintains 20 years of
17 ongoing continuous physical presence in the United States and never sought admission.

18 Plaintiff will suffer irreparable and immediate injury from continued unlawful detention
19 unless the temporary restraining order is issued. Plaintiff is likely to succeed on the merits
20 because he is a member of the Bond Eligible Class and his detention is properly governed by
21 8 U.S.C. § 1226(a). Defendants are in no way prejudiced by Plaintiff's release pending
22 resolution of the Habeas petition.

23 II. LEGAL BACKGROUND

24 Since the implementation of the Illegal Immigration Reform and Immigrant
25 Responsibility Act of 1996 ("IIRIRA"), the Immigration Courts, Board of Immigration
26 Appeals ("BIA"), and Circuit Courts regularly interpreted and implemented 8 U.S.C. §
27 1226(a) as the statute governing the detention and release of persons inadmissible under 8
28 U.S.C. § 1182(a)(6)(A)(i) for having entered without inspection or admission. This has never

1 caused any controversy, or caused Congress to correct this practice and interpretation. 8
2 U.S.C. § 1226(a) allows the Immigration Court to hold a custody hearing and release non-
3 citizens on parole or a bond of at least \$1500. Defendants, beginning in June of 2025,
4 engaged in a concerted effort to hold all non-citizens who entered without admission subject
5 to 8 U.S.C. § 1225, a statute applying to arriving aliens at the port of entry, persons who
6 entered without inspection within the 2 years prior to apprehension, and inadmissible non-
7 citizens “seeking admission.” The Defendants are unlikely to succeed because they do not
8 adhere to the INA’s statutory definition of “admission,” *see Negrete-Ramirez v. Holder*, 741
9 F.3d 1047, 1051 (9th Cir. 2014), and Plaintiff cannot be considered to be “seeking admission”
10 15 years after entry. *See Torres v. Barr*, 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc).

11 Defendants are unlikely to succeed because the Central District of California already
12 issued a declaratory judgment finding that non-citizens who entered without inspection who
13 are not subject to 8 U.S.C. § 1225(a), § 1225(b)(1), or § 1231, are not “applicants for
14 admission” under 8 U.S.C. § 1225(b)(2)(A), and their detention is unambiguously governed
15 by 8 U.S.C. § 1226. *See No. 5:25-CV-01873-SSS-BFM*, – F. Supp. 3d ----, 2025 WL
16 3289861 (C.D. Cal. Nov. 20, 2025).

17 On November 25, 2025, the Federal District Court, Central District of California,
18 certified a Bond Eligible Class:

19 “All noncitizens in the United States without lawful status who
20 (1) have entered or will enter the United States without
21 inspection; (2) were not or will not be apprehended upon arrival;
22 and (3) are not or will not be subject to detention under 8 U.S.C.
§ 1226(c), § 1225(b)(1), or § 1231 at the time the Department of
Homeland Security makes an initial custody determination.”

23 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, – F. Supp. 3d ----, 2025
24 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). “When considering this determination with
25 the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the
26 Bond Eligible Class as a whole.” *Id.*

27 8 U.S.C. § 1226(a) governs the detention and release of non-citizens in removal
28 proceedings: “an alien may be arrested and detained pending a decision on whether the alien

1 is to be removed from the United States . . . and [the immigration court] (2) may release the
2 alien on- (A) bond of at least \$1500 . . . or (B) conditional parole.”

3 8 U.S.C. § 1226(c), amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3
4 (2025), provides for the mandatory detention of inadmissible non-citizens with certain
5 criminal convictions and conduct. The statute and the amendments made by the Laken Riley
6 Act intentionally precludes some aliens inadmissible under 8 U.S.C. 1182(a)(6)(A)(i) from
7 being granted bond. 8 C.F.R. §§ 1003.19(a), 1236.1(d), provide the parameters for EOIR to
8 provide bond hearings to non-citizens pending removal proceedings.

9 The INA provides for mandatory detention of certain non-citizens with final orders of
10 removal under 8 U.S.C. § 1231, suspected terrorists under 8 U.S.C. § 1226a, non-citizens
11 subject to expedited removal under 8 U.S.C. § 1225(b)(1), and those “seeking admission” and
12 being reviewed for admissibility at the time of arrival under 8 U.S.C. § 1225(b)(2).

13 8 U.S.C. § 1225 governs the processing of arriving aliens, and is not a detention
14 statute. The only mention of “mandatory detention” comes under 8 U.S.C. §
15 1225(b)(1)(B)(IV) stating that applicants for admission pending asylum interviews “subject
16 to the procedures under this clause shall be detained pending final determination of credible
17 fear of persecution” 8 U.S.C. § 1225(b)(1)(A)(iii)(II) explicitly excludes from expedited
18 removal non-citizens who can show they have been “physically present in the United States
19 continuously for the 2-year period immediately prior to the date of the determination of
20 inadmissibility.”

21 8 U.S.C. § 1225(b)(2)(A) applies to a non-citizen “who is an applicant for admission,
22 if the examining officer determines that an alien seeking admission is not clearly and beyond
23 a doubt entitled to be admitted, the alien shall be detained for a proceeding under 1229a of
24 this title.” The subsection applies to an “applicant for admission,” with this term being
25 modified and limited to those “seeking admission.” If applicants for admission are to always
26 be considered seeking admission, the inclusion of the condition of those “seeking admission”
27 would be superfluous.

28 Pursuant to *Loper Bright Enterprises v. Raimondo*, 44 S. Ct. 2244(2024), this Court

1 is not bound to the Agency's interpretation of INA. 8 U.S.C. § 1101(a)(13)(A) defines
2 "admission" to mean "the lawful entry of the alien *into* the United States after inspection and
3 authorization by an immigration officer." (Emphasis added). The literal and plain meaning
4 of "seeking admission" means the non-citizen is contemporaneously attempting to enter the
5 United States. If inspected by the officer after entry, the 2 year physical presence exclusion
6 under 8 U.S.C. § 1225(b)(1)(A)(iii)(II) applies.

7 Without directly interpreting the statutory definition of "admission", Defendants issued
8 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that all non-citizens present
9 without inspection, regardless of how many years they have been in the country, are subject
10 to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and are considered to be seeking
11 admission in perpetuity.

12 *Matter of Yajure Hurtado*, 29 I&N Dec. at 221, remains at odds with Ninth Circuit
13 precedent. In *Torres v. Barr*, 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc), the Ninth
14 Circuit provides a thorough analysis, finding that applying for admission means doing so from
15 outside the United States or at a port of entry, seeking physical entry into the country. The
16 *Torres* decision holds that the legal and factual understanding of seeking admission is limited
17 in time, it cannot continue without limit once the non-citizen is already in the United States.
18 *Id.* at 926. "Accordingly, inadmissibility must be measured at the point in time that an
19 immigrant actually submits an application for entry into the United States." *Id.*; *See also*;
20 *Negrete-Ramirez v. Holder*, 741 F.3d 1047, 1051 (9th Cir. 2014) ("The definition refers
21 expressly to *entry into* the United States, denoting by its plain terms passage into the country
22 from abroad at a port of entry.")

23 The *Maldonado Bautista* orders granting partial summary judgment and class
24 certification of a Bond Eligible Class considered all of the above in finding that the detention
25 and release of non-citizens like Plaintiff is governed by 8 U.S.C. § 1226(a).

26 III. STATEMENT OF FACTS

27 Plaintiff is a 30-year-old single male, citizen of Mexico. In 2005, Plaintiff entered the
28 United States without inspection and has not since departed the country. Plaintiff has five

1 U.S. citizen children and no criminal record. Plaintiff has not previously sought admission.

2 On October 21 2025, the Pinal County Sheriff's Office detained Plaintiff for a traffic
3 violation and transferred him to ICE custody. On October 27, 2025, DHS initiated removal
4 proceedings against Plaintiff alleging he entered the United States without admission or
5 parole. Plaintiff is detained by DHS at the Eloy Detention Center in Eloy, Arizona. Plaintiff
6 requested a bond, and on November 17, 2025, the Immigration Judge in Eloy EOIR denied
7 the request finding Plaintiff was subject to mandatory detention. After the *Maldonado*
8 *Bautista* class certification, Plaintiff requested a second custody redetermination hearing on
9 the basis of class membership in the Bond Eligible Class and provided the Court with copies
10 of the Central District of California Court's orders granting class certification and partial
11 summary judgment. On December 1, 2025, the Immigration Judge in Eloy EOIR summarily
12 denied the request for a hearing finding "the order provided does not include a declaratory
13 judgment or injunction." DHS continues to detain Plaintiff at the Eloy Detention Center.

14 **VI. ARGUMENT**

15 "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed
16 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
17 that the balance of equities tips in his favor, and that an injunction is in the public interest."
18 *Winter v. Natural Resources Defense Counsel Inc.*, 129 S.Ct 365, 375 (2008).

19 **A. Plaintiff is likely to succeed on the merits of their argument that 8 U.S.C.**
20 **§ 1225(b)(2)(A) does not apply to him because he is not "seeking**
admission" as defined under the INA.

21 Plaintiff is likely to succeed on their claim that 20 years after entering the United States
22 without inspection, he cannot be held under mandatory detention as an applicant for admission
23 "seeking admission." "Admission" as defined in the INA under 8 U.S.C. § 1101(a)(13)(A)
24 means "the lawful entry of the alien *into* the United States after inspection and authorization
25 by an immigration officer." (Emphasis added). Plaintiff is charged as inadmissible under 8
26 U.S.C. § 1158(a)(6)(A)(i) for having entered the United States without inspection.

27 Defendants have denied Plaintiff consideration of release under 8 U.S.C. § 1226(a) and
28 expressly refused to abide by the Central District of California's orders certifying a bond

1 eligible class. Plaintiff is likely to succeed considering *Maldonado Bautista* already declared
2 non-citizens like Plaintiff are not subject to mandatory detention under 8 U.S.C. §
3 1225(b)(2)(A). Furthermore, Plaintiff is a member of the Bond Eligible Class, as he:

4 a. does not have lawful status in the United States and is currently detained at the
5 Eloy Detention Center. He was apprehended by DHS on or about October 22,
6 2025;

7 b. entered the United States without inspection 20 years ago and was not
8 apprehended upon arrival;

9 c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

10 8 U.S.C. § 1225(b)(2)(A) states a non-citizen “who is an applicant for admission, if the
11 examining officer determines that an alien seeking admission is not clearly and beyond a
12 doubt entitled to be admitted, . . . shall be detained for a proceeding under 1229a of this title.”
13 The Ninth Circuit has previously held that section 1225(b)(2)(A) cannot apply to persons
14 with long residence in the United States because there is a temporal limit to someone “seeking
15 admission.”

16 In *Torres v. Barr*, 976 F.3d 918, 923-926 (9th Cir. 2020)(en banc), the Ninth Circuit
17 provides a thorough analysis, finding that applying for admission means doing so from outside
18 the United States or at a port of entry, seeking physical entry into the country. The *Torres*
19 decision holds that being an applicant for admission is limited in time, and it cannot continue
20 without limit once the non-citizen is already in the United States. *Id.* at 926. “Accordingly,
21 inadmissibility must be measured at the point in time that an immigrant actually submits an
22 application for entry into the United States.” *Id.*; *See also*; *Negrete-Ramirez v. Holder*, 741
23 F.3d 1047, 1051 (9th Cir. 2014) (“The definition refers expressly to *entry into* the United
24 States, denoting by its plain terms passage into the country from abroad at a port of entry.”)
25 By the plain meaning of the statute and the Ninth Circuit’s statutory analysis, the term “seeking
26 admission” cannot apply to a person already inside the United States for over 15 years.

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

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

4 By the plain reading of the statute, Plaintiff who entered 20 years ago, and never
5 sought admission, cannot be considered "seeking admission." 8 U.S.C. § 1225(b)(2)(A) does
6 not apply to Plaintiff.

7 **B. Plaintiff suffers irreparable harm from his continued unlawful detention.**

8 Defendants continue to deny Plaintiff an individualized bond hearing despite Plaintiff
9 clearly being a member of the *Maldonado Bautista* Bond Eligible Class. Defendants' refusal
10 to consider release under 8 U.S.C. § 1226(a) keeps Plaintiff separated from his children, and
11 prevents him from returning to work to support his family. Plaintiff has no criminal history
12 and has established stable domicile in the United States. He is not a danger and not a flight
13 risk, so Plaintiff suffers the emotional harm of being detained without any good factual
14 argument for why he should be detained. Should Plaintiff ultimately win relief from removal,
15 he will be personally and financially set back by the months of detention. If he does not win
16 relief, he would have missed out on the opportunity to prepare and plan to return to his native
17 country. In every way, he is prejudiced by continued detention, and this harm cannot be
18 undone.

19 **C. The balance of equities favors Plaintiff.**

20 Defendants advance a novel argument that goes against decades of practice and
21 interpretation, all with the goal of subjecting millions of people like Plaintiff to mandatory
22 detention. Plaintiff has accrued 20 years of continuous physical presence in the United States.
23 This comes with establishing himself in the community, in the economy, and with his family.
24 The *Maldonado Bautista* orders already resolve the legal issues raised by the Defendants'
25 unlawful actions. Defendants' legal arguments having already been defeated in the class
26 action case, mitigates against any argument Plaintiff remain detained while this particular
27 case, involving the same legal issues, is resolved. Five U.S. citizen children await their
28 father's release. Plaintiff's citizen children are qualifying relatives for purposes of relief

1 against removal under 8 U.S.C. § 1229a(b)(1), cancellation of removal for certain non-
2 permanent residents. Defendants await the outcome of their legal arguments without suffering
3 any real prejudice.

4 **D. Granting the restraining order serves the public interest.**

5 Detaining those who pose no danger and no flight risk constitutes misuse of
6 government and public resources. Family unity remains an important public interest as stated
7 throughout the INA and its attending regulations. *See e.g.* 8 U.S.C. §§ 1153(a), (d),
8 1158(b)(3), 1182(a)(9); 8 C.F.R. §§ 212.7(e), 236, Subpart B. Releasing Plaintiff back to his
9 family and community maintains family unity, an important public interest. Treating people
10 with dignity while they face removal proceedings engenders faith in the system that is harsh,
11 but just, and provides pathways to legalization.

12 **V. CONCLUSION**

13 Plaintiff respectfully requests the Court grant their motion for temporary restraining
14 order to restrain defendants from detaining Plaintiff and from moving Plaintiff outside this
15 Court’s jurisdiction while the concurrently filed habeas petition is litigated.

16 RESPECTFULLY SUBMITTED, this day 17th day of December, 2025,

17 Perez Law Office, PLLC
18 s/ Sabrina Perez-Arleo

CROSSROADS LAW GROUP PLLC
s/ Gabriel G. Leyba, Esq.

19

Sabrina Perez-Arleo
Attorneys for Plaintiff

Gabriel G. Leyba

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CERTIFICATE OF SERVICE

On the 17th day of September, 2025 I, Gabriel G. Leyba, the undersigned, served via certified U.S. Mail, the attached **Motion for Temporary Restraining Order/Preliminary Injunction** on each person/entity listed below addressed as follows:

Civil Clerk
United States Attorney's Office
District of Arizona
Two Renaissance Square
40 N. Central Avenue, Suite 1200
Phoenix, AZ 85004-4408

Fred Figueroa
Warden, Eloy Detention Center
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/s/ Gabriel G. Leyba, Esq.