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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

HARJEET SINGH

Case No.: 1:25-CV-01932

MOTION FOR RESTRAINING ORDER

Petitioner

v.

Kristi Noem, Secretary of the
Department of Homeland Security,
Pamela Bondi, Attorney General of the
United States, Oreste Cruz
Acting Director of the ICE Field
Office, Christopher Chestnut
Warden of the Detention Center

MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner-Plaintiff Harjeet Singh ("Plaintiff") asks this Honorable Court for a temporary restraining order against Defendants ("Defendants") pursuant to Rule 65 of the Federal Rules of Civil Procedure and the All Writs Act. Plaintiff is a civil immigration detainee at the Adelanto Immigration and Customs Enforcement ("ICE") Processing Center in Adelanto, California ("Adelanto Facility"). Defendants deny Plaintiff release on bond under their erroneous new interpretation of the Immigration and Nationality Act ("INA"). The Court should order Plaintiff's release (or that Defendants provide a further bond hearing within 7 days). The Court should

1 further enjoin Defendants from transferring Plaintiff outside of the Court’s jurisdiction.

2 I. Introduction

3 In a sudden change to Defendants’ longstanding policies and practices, Defendants are
 4 denying that individuals situated similarly to Plaintiff are eligible for immigration bond
 5 proceedings. Previously – for decades – noncitizens detained after residing in the United States
 6 were bond-eligible. 8 U.S.C. § 1226 provides noncitizens “arrested and detained” during removal
 7 proceedings “may [be] release[d] on a bond ...” absent certain criminal charges. 8 U.S.C. §
 8 1226(a)(2), (c). The Supreme Court explained § 1226 is the “default” detention provision,
 9 authorizing detaining people “already in the country,” explicitly distinguishing them from
 10 “[noncitizens] seeking admission into the country” who “shall” be detained under § 1225.
 11 *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Defendants now insist that Plaintiff’s detention
 12 should be governed under 8 U.S.C. § 1225. Under Defendants’ new theory, Plaintiff is “seeking
 13 admission” to the U.S. and thus subject to mandatory detention under § 1225(b)(2) – despite
 14 having lived in the United States for years, married, having a daughter, and operating his own
 15 business here. This is a sharp contrast to Defendants’ decades-long prior practice where § 1225
 16 applied only “at the Nation’s borders and ports of entry.” *Jennings*, 583 U.S. at 287.
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19 Plaintiff is entitled to preliminary relief – as numerous federal courts now hold.¹
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21 ¹ See, e.g., *Rodriguez-Vazquez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. Apr. 24, 2025) (granting preliminary
 22 class relief); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, *8 (D. Mass. July 7, 2025) (granting
 23 individual habeas relief); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.3d ---, 2025 WL 2084238, *9
 24 (D. Mass. July 24, 2025) (denying reconsideration of individual habeas relief); *Maldonado Bautista v. Santacruz*, No.
 25 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025) (granting preliminary class relief); *Escalante v. Bondi*, No.
 26 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025) (report and recommendation to grant preliminary relief,
 27 adopted sub nom *O.E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025); *Lopez Benitez v. Francis*, No. 25-Civ-
 28 5937, 2025 WL 2267803 (S.D. N.Y. Aug. 8, 2025) (granting individual habeas relief); *de Rocha Rosado v. Figueroa*,
 No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (recommendation to grant habeas relief, adopted at
 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D.
 Mass. Aug. 14, 2025) (granting habeas relief); *Aguilar Maldonado v. Olson*, No. 25-cv3142, 2025 WL 2374411 (D.
 Minn. Aug. 15, 2025) (same); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal.
 Aug 15, 2025) (same); *Romero v. Hyde*, --- F.Supp.3d ---, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (same); *Leal*
Hernandez v. Noem, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (same); *Benitez v. Noem*,
 No. 5:25-cv-02190, Doc. 11 (C.D. Cal. Aug. 26, 2025) (granting preliminary relief); *Kostak v. Trump*, No. 3:25-cv-
 01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025) (same); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, Doc. 14 (E.D.

1 “The language of ... § 1226 is ... clear[.]. ... [it] applies to [noncitizens] already present in
2 the [U.S.] ... [And] permits ... release on bond.” *Jennings*, 583 U.S. at 303.

3 II. Factual Background

4 A. Immigration Detention’s Legal Framework

5 This case concerns two provisions of the INA governing immigrant detention: 8 U.S.C. §
6 1226(a) and § 1225(b). The distinction between the two determines whether a detained noncitizen
7 can be released on bond or is subject to mandatory detention pending conclusion of their removal
8 proceedings. Noncitizens subject to § 1226(a) face only discretionary detention. *See* 8 U.S.C. §
9 1226(a)(1); 8 C.F.R. § 1236.1(c)(8). These noncitizens can seek a “custody redetermination” – or
10 bond hearing – before an immigration judge (“IJ”) to present evidence that they are not a flight
11 risk or danger to the community. *See* 8 C.F.R. § 1236.1(d); *see also Matter of Guerra*, 24 I&N
12 Dec. 37, 40 (BIA 2006) (describing factors to be considered in assessing danger to the community
13 or flight risk). By contrast, people detained under § 1225(b) are subject to mandatory detention.
14 *See Jennings*, 583 U.S. at 288; 8 U.S.C. § 1182(d)(5). These two provisions reflect immigration
15 law’s distinction between noncitizens arrested *after* entering the country (§ 1226) and those
16 arrested while arriving in the country (§ 1225). Before the 1996 Illegal Immigration Reform and
17 Immigrant Responsibility Act (“IIRIRA”), the statutory authority for custody determinations was
18 found at 8 U.S.C. § 1252(a) (1994), and authorized detention during “deportation” proceedings
19 and release on bond. Those “deportation” proceedings governed the detention of anyone in the
20 United States, regardless of manner of entry. IIRIRA maintained the same authority for detention
21 and release on bond at 8 U.S.C. § 1226(a). *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996)
22 (explaining that § 1226(a) “restate[d] the current provisions in [then 8 U.S.C. § 1252(a)] regarding
23 the authority ... to ... detain, and release on bond...”). The IIRIRA also enacted new mandatory
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Mich. Aug. 29, 2025) (granting *habeas* relief).

1 detention (without bond) provisions for people apprehended on arrival at 8 U.S.C. § 1225. See
2 Jennings, 583 U.S. at 303. In implementing the IIRIRA’s detention authority, the then-INS
3 clarified that people entering the U.S. without inspection and who were not apprehended while
4 “arriving” would continue to be detained under § 1226(a) (formerly § 1252(a)) with access to
5 bond. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Inadmissible [noncitizens], except for arriving
6 [noncitizens], have available to them bond ... This procedure maintains the status quo.”).

7
8 A. Defendants’ New Illegal Mandatory Detention Policy

9 During the almost thirty years since the IIRIRA’s passage, Defendant DHS applied §
10 1226(a) to detain people caught in the interior after entry without inspection. Thus, for decades,
11 Defendants permitted noncitizens the chance to seek release on bond.

12 Now, Defendants have entirely reversed course and now insist that § 1225(b)(2)(A)
13 requires detention of *all* persons who ever entered the U.S. without inspection, regardless of
14 where they were arrested or how long they have resided here. The change began at the Tacoma
15 Immigration Court where IJs began denying bond to everyone who entered without inspection.
16 See *Rodriguez Vazquez*, 779 F. Supp. at 1244. On May 22, 2025, the Board of Immigration
17 Appeals (BIA) issued an unpublished decision affirming one Tacoma IJ’s decision that a
18 noncitizen who lived in the U.S. for over 10 years was subject to mandatory detention under §
19 1225(b)(2)(A).
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22 Following this unpublished BIA decision, in July 2025, DHS “in coordination with the
23 [DOJ]” issued a memo stating “effective immediately, it is the position of DHS” that anyone who
24 entered without inspection is “subject to detention under [8 U.S.C. § 1225(b)] and may not be
25 released from ICE custody” According to DHS, noncitizens are now “ineligible for a [bond]
26 hearing ... and may not be released” during removal proceedings.²
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² ICE Memo, “Interim Guidance Regarding Detention Authority for Applicants for Admission,” issued July 8, 2025.

1 Since DHS's change in position, IJs hearing claims at the Adelanto Facility have now
2 adopted this unlawful interpretation of the INA.

3 B. Statement of Facts

4 Mr. Singh entered the United States without inspection on or about May 10, 2016. *See*
5 Att. A, Harjeet Singh's Notice to Appear. Upon his entry, he was detained, but released on June
6 7, 2016 after an interview with an asylum officer concluded that he "demonstrated a credible fear
7 of persecution or torture" should he be returned to his home country. *Id.* He has, since, married,
8 formed a successful small business, and is the father of a United States Citizen daughter.
9

10 On or about July 22, 2025, Mr. Singh was taken into custody by an ICE officer outside of
11 his home. Shortly prior to this detention by ICE officials, he had been arrested by Kern County
12 Sheriff's officers while traveling as one of the passengers in the vehicle of a driver who is now
13 alleged to have engaged in criminal threats. *See, generally*, Att. B, Police Reports. Mr. Singh
14 contemporaneously denied wrongdoing, and continues to deny wrongdoing (in fact, appearing
15 entirely ignorant of any wrongdoing). *See* Att. C, Affidavit of Harjeet Singh. He has no
16 additional criminal record of any kind, and has not been charged with any of the events
17 precipitating his arrest by Kern County.
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19 Following his July 2025 detention by ICE officials, the Immigration Court set a hearing
20 set to examine the merits of his application for asylum, and for other relief from immigration
21 proceedings, for December 4, 2025. *See* Att. D, *Hearing Notice Dated October 9, 2025*.
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23 He applied for a bond, but his request was denied on August 22, 2025 when the IJ
24 determined that he lacked jurisdiction to hear Mr. Singh's application, pursuant to the
25 Defendants' new understanding of eligibility for bond. *See supra*. Moreover, the IJ found that
26 Mr. Singh was a "Danger," when he concluded that Mr. Singh's insistence that he was innocent
27 of wrongdoing was "wildly implausible" given the fact of his arrest, and that Mr. Singh was
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1 “facing charges of making threats.” *See* Att. E, *IJ’s Order Denying Bond Relief*.

2 Mr. Singh, then, prepared to present the merits of his asylum case case at the hearing set
3 for December 4, 2025. He ensured that various witnesses – including two important leaders of
4 his political organization – would be available to testify for him via video appearance. However,
5 just two days prior to the scheduled hearing, the Immigration Court continued his proceedings
6 without motion by either party, rescheduling Mr. Singh’s hearing to March 4, 2026. Att. E,
7 *Hearing Notice Dated December 2, 2025*.

9 Subsequently, Narinder Singh (“Narinder”) – the driver of the vehicle in which Mr. Singh
10 was traveling when he was arrested in Kern County – has been charged with criminal assault for
11 making threats to another individual. Narinder’s attorney received copies of the police reports
12 pertaining to Mr. Singh’s arrest pursuant to a discovery request. Mr. Singh’s family was able to
13 contact Narinder and his attorney and they were able to provide these documents to Mr. Singh,
14 allowing him to file a Motion to Reopen the bond proceedings pursuant to the availability of
15 previously unavailable evidence.

17 C. Mr. Singh is Ideally Qualified for Bond

18 Mr. Singh – like many hundreds of others like him – is detained solely because of
19 Defendants’ new policy. He has lived in Southern California for nearly ten years, where he has
20 established substantial ties to the community: he owns and operates his own small business,
21 which – prior to his detention – generated substantial and steady income. He is married, and the
22 couple have a United States citizen daughter.

24 He has no criminal convictions, and other than a single arrest (for a crime which would
25 not be disqualifying) has no criminal record in his many years of residency. The arrest itself can
26 now be established to have resulted solely from his proximity to another criminal. *Matter of*
27 *Lopez-Meza*, 22 I. & N. Dec. 1188, 1194 (B.I.A. 1999); *Matter of Guerra*, 24 I&N Dec. 37, 40
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1 (BIA 2006); 8 U.S.C. § 1226(c)(1)(E)(ii). In short, he is an ideal candidate for bond.

2 ICE initiated removal proceedings against Mr. Singh, charging him with “seeking
3 admission” while “not in possession of a valid unexpired immigrant visa, reentry permit, border
4 crossing card, or other valid entry document required by the Act” *i.e.*, entering the country
5 “without inspection” and “seeking admission” in violation of 8 U.S.C. § 1182. After Plaintiff was
6 detained on or about July 22, 2025, he requested bond. IJ Jerome M. Rothschild denied this bond
7 on August 22, 2025, stating that he lacked jurisdiction and relying on Defendants’ new
8 interpretation of the statute. IJ Rothschild additionally found that Mr. Singh’s repeated denials
9 that he had done anything wrong indicated that he constituted a “Danger,” as he was then “facing
10 charges of making threats and gave me a wildly implausible version of events.” However, now
11 that Narinder Singh (“Narinder”) – the unrelated individual in whose vehicle Mr. Singh was a
12 passenger at the time of their arrests – has been charged with assault for making criminal threats,
13 the arrest record has now been made available to Mr. Singh.

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16 The newly-available arrest record establishes that (1) Mr. Singh himself was not the
17 principal subject of the arrest, (2) that police immediately assisted the victim of Narinder’s
18 alleged crime with a restraining order against Narinder but not against Mr. Singh, and (3) that
19 Narinder himself has now been charged. Coupled with the fact that Mr. Singh himself has *not*
20 been charged, this new evidence provides strong evidence that the IJ was incorrect in his
21 assessment of the case and the fact that this evidence is only recently available establishes
22 grounds for reopening Mr. Singh’s bond proceedings. *Ayala v. Sessions*, 855 F.3d 1012, 1020
23 (9th Cir. 2017) (“a motion to reopen may be granted only upon a proffer of new evidence that is
24 material and was not available and could not have been discovered or presented at the former
25 hearing.”)
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27 Thus, the government will not be able to show that Mr. Singh remains a danger to the
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community. *See* 8 C.F.R. § 1003.19(h); *see also Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The record establishes that he is not one and the newly available evidence compels that the record be reopened for reassessment before he be detained for a further three months.

But prior to reopening his bond proceeding, Mr. Singh must first establish his statutory eligibility for a bond. Hence, the instant action.

II. Legal Standard for Granting Preliminary Relief

Plaintiff can easily show he is entitled to preliminary relief as (1) he is likely to succeed on the merits; (2) he will suffer irreparable harm absent preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1255 (10th Cir. 2003). *Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Cal. Chamber of Com. V. Cert.*, No. 21-15745, 14 (9th Cir. 2022). Moreover, the balance of hardships and public interest factors “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

III. Legal Argument – The Court Should Order Preliminary Relief

A. Mr. Singh is Likely to Succeed on the Merits Because (i) DHS will Not Be Able to Bear its Burden and (ii) Mr. Singh is Eligible for Bond Because Defendants’ Policy Violates the INA

Here, given the newly-available evidence effectively exonerates Mr. Singh from direct involvement in any crime and suggests that he was an unknowing passenger in Narinder’s vehicle at the time of his arrest, he is highly likely to succeed on the merits of his bond, Mr. Singh will be able to show by clear and convincing evidence that he is not a danger to the community and is not a flight risk, given his otherwise spotless record of lawful conduct in the United States extending nine years, extensive ties to the community, family, and business interest in the United States.

Further, simply put, Defendants’ policy violates the INA. As the Supreme Court

1 explained, § 1225 is concerned “primarily [with those] seeking entry,” i.e., cases “at the Nation’s
2 borders and ports of entry, where the Government must determine whether a[] [noncitizen]
3 seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 297 & 287.

4 In contrast, § 1226 applies to people who, like Plaintiff, are “already in the country” and
5 are detained “pending the outcome of removal proceedings.” *Id.* at 289. The INA’s plain text,
6 canons of statutory construction, the statutes’ legislative history, the implementing regulations,
7 and decades of agency practice all support this conclusion.

8 Thus, every court considering the issue sided with individuals similarly-situated to
9 Plaintiff with regards to bond eligibility. *See supra* at fn.1.

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11 1. The text of § 1226(a) and canons of statutory construction demonstrate
12 Plaintiff is entitled to bond hearings.

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14 Contrary to Defendants’ new policy, application of § 1226(a) does not turn on whether a
15 person was previously admitted to the country. The plain text of 8 U.S.C. § 1226(a) includes
16 people who are inadmissible, like Plaintiff. Here, in the removal proceedings, DHS alleges
17 Plaintiff entered the country without inspection and thus is present without inspection. *See* 8
18 U.S.C. § 1182(a)(6)(A)(i). Section 1226(a) – the INA’s “default” detention authority, *Jennings*,
19 583 U.S. at 281 – applies to people detained “pending a decision on whether the [noncitizen] is to
20 be removed.” 8 U.S.C. § 1226(a).

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22 As the statute expressly provides, this language includes both (1) people like Mr. Singh,
23 who entered without inspection, were never formally admitted to the country, and thus are
24 charged as “inadmissible” under § 1182(a)(6)(A)(i), and (2) people who were admitted and are
25 charged as “deportable” under the INA. *See id.* § 1229a(a)(3) (removal proceedings “determine[e]
26 whether a [noncitizen] *may be admitted* to the [U.S.] or, if the [noncitizen] has been so admitted,
27 removed from the [U.S.]”) (emphasis added).

1 The statute's structure makes this clear. Subsection 1226(a) provides the general right to
2 seek release on bond. Subsection 1226(c) then carves out discrete categories of noncitizens who
3 are subject to mandatory detention due to certain criminal history. See, e.g., *id.* § 1226(c)(1)(A),
4 (D). These carve-outs include noncitizens who are inadmissible for entering without inspection
5 and who meet certain other crime-related criteria. See *id.* § 1226(c)(1)(E). Because § 1226(c)'s
6 exception expressly applies to people who entered without inspection (like Plaintiff) and who
7 meet certain other criteria, it reinforces the default rule: § 1226(a)'s general detention authority
8 otherwise applies to Plaintiff. See *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559
9 U.S. 393, 400 (2010). Recent amendments to § 1226 reinforce this point by explicitly including
10 people who are inadmissible for being present without admission/having entered without
11 inspection. See Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) ("LRA"). These
12 amendments make people charged as inadmissible under § 1182(a)(6)(A)(i) (the inadmissibility
13 ground for entry without inspection) or (a)(7) (the inadmissibility ground with which Mr. Singh
14 was charged, *i.e.*, for lacking valid documentation) and who have had certain criminal encounters
15 subject to mandatory detention under § 1226(c). See 8 U.S.C. § 1226(c)(1)(E). By including such
16 individuals under § 1226(c), Congress expressly reaffirmed that § 1226(a) covers persons charged
17 under § 1182(a)(6)(A) or (a)(7). "[W]hen Congress creates 'specific exceptions' to a statute's
18 applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez*
19 *Vazquez*, 779 F.Supp.3d at 1256-57 (*quoting Shady Grove*, 559 U.S. at 400). See also *Gomes*,
20 2025 WL 1869299, *6; *Diaz Martinez*, 2025 WL 2084238, *7.

24 Several canons of interpretation reinforce this understanding. First, the canon against
25 rendering text superfluous applies. See, e.g., *Clark v. Rameker*, 573 U.S. 122, 131 (2014) ("a
26 statute should be construed so that effect is given to all its provisions, so that no part will be
27 inoperative or superfluous," internal citations omitted). Despite the plain text of § 1226,
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1 Defendants now assert that anyone present in the U.S. without being admitted is subject to §
2 1225(b)(2)(A) mandatory detention. This interpretation renders significant portions of Section
3 1226(c) meaningless. *Rodriguez Vazquez*, 779 F.Supp.3d at 1258. As the *Rodriguez Vazquez*
4 court explained, this is so because if “Section 1225 ... and its mandatory detention provisions
5 apply to all noncitizens who have not been admitted, then it would render superfluous provisions
6 of Section 1226 that apply to certain categories of inadmissible noncitizens.” *Id.* at 1258 (citation
7 modified). Second, “when Congress amends legislation, courts must presume it intends the
8 change to have real and substantial effect.” *Ross v. Blake*, 578 U.S. 632, 641–42 (2016) (cleaned
9 up). That presumption applies here, given the LRA’s amendments to § 1226. *See Rodriguez*
10 *Vazquez*, 779 F.Supp.3d at 1259 (quoting *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995)). And, as
11 noted above, and as the *Rodriguez Vazquez* court explained, these amendments explicitly provide
12 that § 1226(a) covers people like Plaintiff. This is because the “specific exceptions [in the LRA]
13 for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated
14 crimes logically leaves those inadmissible noncitizens *not* criminally implicated under Section
15 1226(a)’s default rule for discretionary detention.” *Id.* at 1259 (emphasis original). *See also, e.g.*
16 *Diaz Martinez*, 2025 WL 2084238, at *7 (“if, as the Government argue[s], ... a noncitizen’s
17 inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A),
18 then the 2025 [LRA] amendment would have no effect”). Finally, “[w]hen Congress adopts a
19 new law against the backdrop of a longstanding administrative construction,” courts “generally
20 presume[] the new provision should have been understood to work in harmony with what has
21 come before.” *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (citation modified).
22 This canon also supports Plaintiff’s understanding of the statute, because “Congress adopted the
23 new amendments to Section 1226(c) against the backdrop of decades of post-IIRIRA agency
24 practice applying discretionary detention under Section 1226(a) to inadmissible noncitizens such
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1 as [Plaintiffs].” *Rodriguez Vazquez*, 779 F.Supp.3d, at 1259.

2 2. The statutory structure and the textual limitations of § 1225(b)(2) further
3 demonstrate that § 1226(a), not § 1225(b)(2), applies to Plaintiff.

4 The statutory structure also strongly supports the long-accepted interpretation that §
5 1226(a) applies to Plaintiff. “In ascertaining the plain meaning of the statute, the court must look
6 to the particular statutory language at issue, as well as the language and design of the statute as a
7 whole.” *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted); *see also*
8 *Biden v. Tex.*, 597 U.S. 785, 799-800 (2022) (interpreting the INA). The Supreme Court has
9 described the structure of § 1226 and § 1225 as distinguishing between the two basic groups of
10 noncitizens. Section 1226(a) (with access to bond) applies to those who are “already in the
11 country” and are detained “pending the outcome of removal proceedings.” *Jennings*, 583 U.S. at
12 289. By contrast, § 1225(b)(2) mandatory detention applies “at the Nation’s borders and ports of
13 entry, where the Government must determine whether a[] [noncitizen] seeking to enter the
14 country is admissible.” *Id.* at 287. Indeed, the whole purpose of § 1225 is to define how DHS
15 inspects, processes, and detains people at the border. *See id.* at 297 (“[Section] 1225(b) applies
16 primarily to [noncitizens] seeking entry into the [U.S.] ...”). *See also* H.R. Rep. No. 104-469, pt.
17 1, at 157-58, 228-29 (explaining the purpose of § 1225). Section 1225’s text reinforces the two
18 sections’ structure and reflects its limited temporal scope. To begin, § 1225 concerns the
19 “inspection” and “expedited removal of inadmissible arriving [noncitizens].” 8 U.S.C. § 1225.
20 For example, § 1225(b)(1) encompasses only “inspection” of certain “arriving” noncitizens, and
21 only those who are “inadmissible” for having misrepresented information or lacking entry
22 documents. Section 1225(b)(2) is similarly limited to people applying for admission on arrival,
23 but whom (b)(1) does not cover. The title explains that it addresses “[i]nspection of other
24 [noncitizens].” The subsection further specifies it applies only to “applicants for admission”
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(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 U.S.

[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. Until recently, even Defendants took this position, explaining “‘seek[ing] admission’ ... entails affirmative actions to gain authorized entry.”³ “This active construction of the phrase ‘seeking admission’” accords with the plain language in § 1225(b)(2)(A) by requiring both that a person be an “applicant for admission” and “also [be] doing something” following arrival to obtain authorized entry. *Diaz Martinez*, 2025 WL 2084238, at **6-7 (emphasis in original); *see also Lopez Benitez*, 2025 WL 2267803, at *7 (this is the “plain, ordinary meaning” of “seeking admission”). By contrast, under Defendants’ new policy, inadmissibility alone triggers § 1225(b)(2) mandatory detention. But as the Government itself previously said:

Nothing in [§ 1225’s] structure suggests that Congress regarded [noncitizens] ‘seeking admission’ and ‘applicants for admission’ as equivalent, interchangeable terms. If that were the case, the statutory reference to [noncitizens] ‘seeking admission’ would be redundant; Congress could simply have stated that all ‘applicants for admission’ ‘shall be detained for’ removal proceedings, without any reference to [noncitizens] ‘seeking admission.

³ Ex. 9, Reply Br. for Fed. Appellees at 14-15 (pdf pp. 21-22), *Crane v. Johnson*, No. 14-10049 (5th Cir. Sept. 29, 2014); accord Ex. 10, Tr. of Oral Argument at 44:23-45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) (“[Solicitor General]: ... DHS’s long standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.”).

1 *Crane Br.* at p.16.

2 The statute's temporal focus on people "arriving" is evident in other respects too. Section
3 1225(b)(2)(C) addresses "[t]reatment of [noncitizens] *arriving* from contiguous territory"
4 (emphases added). This language underscores Congress' focus on people who just entered the
5 U.S., and not on people like Mr. Singh who were residing in the interior.

7 3. The legislative history further supports Plaintiff's argument.

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

12 Before the IIRIRA, people like Plaintiff were not subject to mandatory detention under
13 any theory. *See* 8 U.S.C. § 1252(a) (1994). Had Congress intended a monumental shift in
14 immigration law (potentially subjecting millions of people to mandatory detention), it would have
15 clearly said so. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (finding
16 "implausible that Congress would give to the [agency] through these modest words [such]
17 "power"). In fact, Congress said the opposite: the new § 1226(a) just "restates the current
18 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 [Plaintiff] were entitled to
19 discretionary detention under [§] 1226(a)'s predecessor statute and Congress declared its scope
20 unchanged ... this background supports [Plaintiff's] position that he too is subject to discretionary
21 detention." *Rodriguez Vazquez*, 779 F.Supp.3d at 1260.

25 4. Defendants' policies violate longstanding Executive Office of
26 Immigration Review⁴ regulations

28

⁴ That is, Immigration Courts.

Finally, Defendants’ policies violate EOIR’s regulations stating people like Mr. Singh are detained under § 1226(a) and bond-eligible. Following the IIRIRA’s passage, in the decades since, and still today, EOIR’s regulations recognize Plaintiff is detained under § 1226(a). EOIR explained “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted ... will be eligible for bond.” 62 Fed. Reg. at 10323; *see also id.* (“Inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond.”). 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 regulation governing IJs’ bond jurisdiction – 8 C.F.R. § 1003.19(h)(2) – only limits an IJ’s bond jurisdiction to noncitizens subject to § 1226(c). 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. Plaintiff Faces Imminent, Irreparable Harm

Because Plaintiff was denied bond, he is imprisoned in jail-like conditions. “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).

Detention causes “potentially irreparable harm every day [one] remains in custody.” *Rodriguez Vazquez*, 779 F.Supp.3d at 1262. Incarceration deprives noncitizens of a “profound” liberty interest—one that always requires some form of procedural protections. *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011); *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” (citation omitted)). Courts routinely find far less weighty interests justify preliminary relief. *See, e.g., Ohio Oil Co. v. Conway*, 279 U.S. 813

1 (1929) (tax payment).

2 This Court must find that Mr. Singh's interests in his personal liberty justifies preliminary
3 relief.

4 C. Balancing the Equities and Public Interest Weigh Heavily in Favor of Relief

5 The balance of equities and the public interest factors merge in cases against the
6 government. *See, e.g., Nken v. Holder*, 556 U.S. 418, 436 (2009). Moreover, the government
7 cannot claim injury from an order enjoining unlawful action. *See, e.g., Rodriguez v. Robbins*, 715
8 F.3d 1127, 1145 (9th Cir. 2013); *Wages & White Lion, Inv., L.L.C. v. FDA*, 16 F.4th 1130, 1143
9 (5th Cir. 2021) ("There is generally no public interest in ... unlawful agency action").

10 Requiring the government to return to its prior practice – granting bond hearings – does
11 not injure Defendants in any way. People granted bond – especially when represented by
12 immigration counsel – regularly attend subsequent proceedings. Particularly where, as here, such
13 individuals have strong claims for relief, which have been previously prepared for a trial which
14 the Immigration Judge delayed at the last moment, and where they have strong ties to the
15 community.

16 Mr. Singh is highly likely to attend subsequent hearings, and not even the Immigration
17 Judge denied his initial bond request by concluding that he was a flight risk.

18 Finally, an injunction is entirely within the public interest and the equities thus tip heavily
19 in favor of Mr. Singh: he was, previously, prepared to present his asylum case to the Immigration
20 Judge, but the IJ continued his proceedings without motion by either party *two days prior to a*
21 *long-awaited trial*. *See* Att. B, *Hearing Notice Dated December 2, 2025*; *Hearing Notice Dated*
22 *October 9, 2025* (setting a trial date for December 4, 2025 at 1:00pm). This continuance, *sua*
23 *sponte* by the Immigration Court, only lengthens Mr. Singh's unreasonable detention. He has
24 already been detained for six months, after living nearly ten years in the United States with no
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1 criminal convictions or even charges filed. Thus, plaintiff is suffering tremendous ongoing and
2 entirely unreasonable harm given his non-existent flight risk and the fact that he poses no
3 meaningful danger to the community.

4 Defendants, by contrast, face little to no hardship by his release. They “cannot suffer
5 harm from an injunction that merely ends an unlawful practice” *Rodriguez v. Robbins*, 715
6 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the
7 immigration laws, and that interest includes respect for protections Congress has enacted and to
8 which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169,
9 178 (5th Cir. 2005) (recognizing “the public interest in having the immigration laws applied
10 correctly and evenhandedly”); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting
11 “the public’s interest in ensuring that we do not deliver [noncitizens] into the hands of their
12 persecutors”); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing “the public interest
13 in Government observance of the Constitution and laws”).

14 “Society’s interest lies on the side of affording fair procedures to all persons, even though
15 the expenditure of governmental funds is required.” *Hernandez* at 95-96 ; *Lopez v. Heckler*, 713
16 F.2d 1432, 1437 (9th Cir. 1983). *A fortiori* where, as here, maintaining his detention is actually
17 the costlier of the options. “[T]he balance of hardships tips decidedly in plaintiffs’ favor” when
18 “[f]aced with such a conflict between financial concerns and preventable human suffering.”
19 *Hernandez v. Sessions*, at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

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23 D. Due Process Precludes Delay in Proceedings for Individuals Pending Criminal
24 Charge

25 The Ninth Circuit has expressed “grave doubt” that “any statute that allows for arbitrary
26 prolonged detention without any process is constitutional or that those who founded our
27 democracy precisely to protect against the government’s arbitrary deprivation of liberty would
28

1 have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). To guarantee against
2 such arbitrary detention and to guarantee the right to liberty, due process requires “adequate
3 procedural protections” that ensure the government’s asserted justification for a noncitizen’s
4 physical confinement “outweighs the individual’s constitutionally protected interest in avoiding
5 physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).
6

7 This principle is all-the-more relevant in a case like this one, in which Mr. Singh has been
8 held in detention in anticipation of *unfiled criminal charges*, in spite of due process rights
9 generally requiring that charges be filed or a probable cause determination be made within *hours*
10 of their detention. *See, e.g., County of Riverside v. McLaughlin*, 500 U.S. 44, 50 (1991) (“This is
11 not to say that the probable cause determination in a particular case passes constitutional muster
12 simply because it is provided within 48 hours. Such a hearing may nonetheless violate *Gerstein* if
13 the arrested individual can prove that his or her probable cause determination was delayed
14 unreasonably.”)
15

16 Here, Mr. Singh has been detained by immigration officials, who argue that *unfiled*
17 *charges* against him preclude him from showing that he is not a danger to the community more
18 than *five months* after his arrest in California. By the time that his immigration hearing is held,
19 even if it is held as scheduled, he will have been detained for nearly *nine months* without a
20 hearing on the merits of his immigration claim or an opportunity to establish his innocence of any
21 crimes relating to his initial arrest by Kern County.
22

23 And there can be no argument that these delays have been “reasonable” within the
24 meaning of the constitution. The Immigration Judge provided no reasoning at all in rescheduling
25 a hearing which had been set two months earlier to a date three months in the future. According
26 to the Immigration Court’s current schedule, Mr. Singh is expected to be incarcerated for roughly
27 *nine months* over a crime it is clear he did not commit and of which he had no knowledge.
28

1 Surely such a state of affairs violates any constitutional norm or principle.

2 **IV. CONCLUSION**

3 For the foregoing reasons, Plaintiff requests that the Court grant preliminary injunctive relief,
4 enjoining Defendants from incarcerating Plaintiff without criminal charges prior to his asylum
5 hearing, and ordering Defendants to immediately release Plaintiff on a reasonable bond.
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8 Respectfully Submitted,

BHATNAGAR LAW OFFICE
Attorneys for Respondent

9 /s/ Nikhil Bhatnagar /s/
10 Nikhil Bhatnagar
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