UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Marco JEREZ-LOPEZ	)	
	)	**Case No. CIV-26-0041-SLP**
Petitioner,	)	
	)	
v.	)	**PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER REQUESTING IMMEDIATE RELEASE OR PRELIMINARY INJUNCTION**
Kristi NOEM, et.al.	)	

STATEMENT OF FACTS

On January 9, 2025, Petitioner, Marco JEREZ-LOPEZ ("Mr. Jerez-Lopez" or "Petitioner") filed a petition for a writ of habeas corpus on the basis that his immigration detention violates the Immigration and Nationality Act as well as his substantive and procedural due process rights. *See* ECF Doc. 1. It has come to the attention of counsel that Petitioner has been moved to the Diamondback Correctional Facility in Watonga, OK and does not have access to counsel.[1]

Petitioner now seeks a temporary restraining order or a preliminary injunction pursuant to 28 U.S.C. § 2241 and Federal Rule of Civil Procedure 65 ordering that he be released from physical custody, or in the alternative, that he be afforded an immediate bond hearing pursuant to 8 U.S.C. § 1226(a). Counsel has tried to reach Petitioner and has been unsuccessful because the facility does not have a manner to set up attorney/client communication.[2] Specifically, a recording answers asking for an extension. We were able to make contact with "medical," but medical did

[1] *See* Exhibit 1: ICE Detainee Locator
[2] *See* Exhibit 2: Affidavit from Cassidy Walsh, associate for counsel

not know how to make proper contact and tried to forward to the Chief of Security who did not answer. Importantly, Petitioner is scheduled for a removal hearing out of Aurora, CO, from the Cimarron Detention Facility for January 20, 2026[3] and it is unknown how that hearing will happen from the Diamondback Facility because the Diamondback Facility is not currently listed on the Administrative Control Court Listings.[4] It is also unknown whether Petitioner will be able to communicate with counsel prior to the hearing. Immediate release is critical to Petitioner's Due Process rights.

ARGUMENT

A temporary restraining order is appropriate where the movant establishes: (1) a likelihood of success on the merits; (2) a likelihood of suffering irreparable harm in the absence of immediate relief; (3) that the balance of equities tips in the movant's favor; and (4) that the injunction is in the public interest. *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1208 (10th Cir. 2009); see also *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Tenth Circuit does not permit a relaxed standard or "sliding scale" approach. *Dine Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1282 (10th Cir. 2016). Each element must be independently satisfied. *Id.*

A. Petitioner is likely to succeed on the merits

1. Detention Authority under the INA

Petitioner is likely to succeed on the merits of his claims that his continued detention

[3] *See* Exhibit 3 Hearing Notice
[4] *See* Exhibit 4 Administrative Control Courts

violates his substantive and procedural due process rights as well as the INA. The government has recently changed its interpretation and application of the INA's detention scheme, now detaining individuals who have spent decades in the United States under the supposed authority of 8 U.S.C. § 1225(b)(2). This position is contrary to almost thirty years of prior interpretation of the law.

8 U.S.C. § 1225 provides for expedited removal proceedings for certain noncitizens who arrive at ports of entry or enter the United States without inspection. Section 1225(a) provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a [noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1).

An applicant for admission is subject to expedited removal under § 1225(b)(1) if the individual is initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, 8 U.S.C. § 1225(b)(1)(A)(i)), or he (1) "lacks a valid entry document; (2) has not 'been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility'; and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020) (citing 8 U.S.C. § 1225(b)(1)(A)(iii)(I)-(II)). When a noncitizen meets the criteria of this subsection, the immigration "officer shall order the alien

removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum." 8 U.S.C. § 1225(b)(1)(A)(i).

Applicants for admission can avoid expedited removal by either indicating "an intention to apply for asylum" or "a fear of persecution," in which case that individual is referred to an asylum officer. 8 U.S.C. § 1225(b)(1)(A)(i)–(ii). "If an immigration officer determines after that interview that the alien has a credible fear of persecution, 'the alien shall be detained for further consideration of the application for asylum.'" *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (quoting 8 U.S.C. § 1225(b)(1)(B)(ii)). Persons who make no such claims or are "found not to have such a fear" "shall be detained ... until removed." 8 U.S.C. § 1225(b)(1)(A)(ii), (B)(iii)(IV).

The INA also provides for mandatory detention for certain individuals who are subject to inspection at or near the border but who do not fall under the expedited removal provisions of 8 U.S.C. § 1225(b)(1). Specifically, if an inspecting immigration officer "determines that an alien seeking admission is not clearly and beyond doubt entitled to be admitted" into the United States, the individual "shall be detained for a [removal] proceeding." 8 U.S.C. § 1225(b)(2)(A); *Mendoza Gutierrez v. Baltasar*, 2025 WL 2962908, at *6 (D. Colo. Oct. 17, 2025) (recognizing that § 1225(b)(2)(A) is "a catchall provision" that applies to noncitizens seeking admission who are not otherwise covered by § 1225(b)(1), but concluding that such "catch-all" status "does not mean that § 1225(b)(2) applies to all other noncitizens in the United States who have not been admitted."). Thus, for individuals subject to inspection by immigration officers upon seeking admission to the United States, both § 1225(b)(1) and § 1225(b)(2) "require that any applicant for

admission remain detained until [either] their asylum application is fully adjudicated or until removal proceedings conclude.'" *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *5 (E.D. Va. Sept. 19, 2025) (internal citation omitted).

However, for those individuals with an established presence in the United States, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure" for consideration of admission to or removal from the United States unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3). During the pendency of these standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. While § 1226(c) mandates the detention of certain classes of criminal noncitizens, § 1226(a) sets forth a discretionary detention scheme, allowing that a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States[.]" 8 U.S.C. § 1226(a). After an arrest, the noncitizen may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. *Id.* Once a noncitizen is detained, DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have the initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R.§ 1236.1(d)(3).

The Supreme Court recognized the distinction between these two statutory detention schemes, explaining that § 1225 applies primarily to aliens seeking entry into the United

States ("applicants for admission" in the language of the statute), while § 1226(a) "applies to aliens already present in the United States." *Jennings*, 583 U.S. at 297, 303. "The *Jennings* analysis explains the necessity for both statutes by differentiating between the detention of arriving aliens who are seeking entry into the United States under Section 1225 and the detention of those who are already present in the United States under Section 1226." *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025);

2. *DHS's Application of 8 U.S.C. § 1225(b)(2) to Petitioner is Not Statutorily Authorized.*

Petitioner is likely to succeed in his claim that the government is unlawfully detaining him pursuant to 8 U.S.C. § 1225(b)(2), because he is not an applicant for admission who is seeking admission to the United States. Rather, he has lived in the United States for over thirty years. Instead, his detention should be governed 8 U.S.C. § 1226(a), which the Supreme Court has recognized as "the default rule" for detaining and removing aliens "already present in the United States." *Jennings*, 583 U.S. at 288.

Critically, 8 U.S.C. § 1225(b)(2)(A) contains three "criteria" for considering the inspection of noncitizens arriving in the United States: (1) that the noncitizen is an "applicant for admission"; (2) that the noncitizen is actively "seeking admission"; and (3) that the "examining immigration officer determines 'is not clearly and beyond a doubt entitled to be admitted.'" *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (quoting *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025), and 8 U.S.C.§ 1225(b)(2)(A)); *Lopez Santos v.*

Noem, No. 3:25-cv-1193, 2025 WL 2642278, at *4 (W.D. La. Sept. 11, 2025). None of these terms apply to individuals like Petitioner.

First, the INA clarifies that "[t]he term 'application for admission' has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa," making clear that the term applies primarily to those applying to enter into the United States, not those who have been in the United States for years. 8 U.S.C. § 1101(a)(4). Second, the phrase "seeking admission" in 8 U.S.C. § 1225(b)(2)(A), is not "mere surplusage" and has independent meaning in § 1225(b)(2)(A). *Lopez Benitez*, 2025 WL 2371588, at *6 (citing *Martinez v. Hyde*, 2025 WL 2084238, at *4 (describing respondents as treating the phrase "seeking admission" as mere surplusage of the "applicant" requirement in § 1225(b)(2)(A)). The government's interpretation equating "applicant for admission" to one who is also "seeking admission" reads the phrase "seeking admission" out of the statute and controverts the plain language of the statute. *Martinez*, 2025 WL 2084238, at *6; *Lopez Benitez*, 2025 WL 2371588, at *6 ("[R]ather than stating that mandatory detention is required for any 'applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted,' § 1225(b)(2)(A) (emphasis added), the statute would instead provide for mandatory detention for any 'applicant for admission, if the examining immigration officer determines that [the] alien ~~seeking admission~~ is not clearly and beyond a doubt entitled to be admitted.'") (strikethrough in original); *see also Hasan v. Crawford*, -- F. Supp. 3d --, 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *8 (E.D. Va. Sept. 19, 2025) ("In *Jennings*, the Court

explained that § 1225(b) governs "aliens seeking admission into the country" whereas § 1226(a) governs "aliens already in the country" who are subject to removal proceedings.) (citing *Jennings*, 583 U.S. at 289). Third, at the time of Petitioner's arrest, he was not being examined for inspection into the United States, and thus no officer has deemed him "clearly and beyond a doubt entitled to be admitted" to the United States. 8 U.S.C. § 1225(b)(2)(A). Accordingly, the plain text of the statute clearly indicates that Petitioner is not someone subject to § 1225(b)(2)(A).

Respondents' interpretation and application of § 1225(b)(2) would also nullify the recent amendments to the INA in the Laken Riley Act, now codified within 8 U.S.C. § 1226(c). *See Hasan*, 2025 WL 2682255, at *8. Among other things, the Laken Riley Act mandates detention for noncitizens who are subject to certain inadmissibility grounds, the same grounds that Respondents argue mandatory detention under § 1225(b)(2) and meet certain criminal criteria. 8 U.S.C. § 1226(c)(1)(E). Such a statute would be entirely redundant if a noncitizen's inadmissibility alone rendered him subject to mandatory detention under § 1225(b)(2)(A). *See Hasan*, 2025 WL 2682255, at *8. "When Congress adopts a new law against the backdrop of a longstanding administrative construction, [the] court generally presumes the new provision should be understood to work in harmony with what came before." *Monsalvo v. Bondi*, 145 S. Ct. 1232, 1242 (2025); *see also Lopez Benitez*, 2025 WL 2371588, at *7 (citing *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation," such as this one, "would render superfluous another part of the same statutory scheme.")). Thus, it is "presumptively dubious" that Congress would intend the 2025 amendments to have no

effect. *Martinez*, 2025 WL 2084238, at *7 (citing *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019) ("[S]ection [1225] (under which detention is mandatory) and section [1226] (under which detention is permissive) can be reconciled only if they apply to different classes of aliens.")).

Petitioner's detention without the opportunity to seek release under bond is contrary to law. This Court has already joined the dozens of courts throughout the country, including several within the Tenth Circuit, holding § 1226(a) is the proper statute of detention. *See Escarcega v. Jones*, 5:25-CV-1129-J (W.D.Okla, Nov. 20, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025).

3. DHS's Application of 8 U.S.C. § 1225(b)(2) to Petitioner violates both his procedural and substantive due process rights.

In claiming that Petitioner's detention is pursuant to 8 U.S.C. § 1225(b)(2), the government has intentionally precluded him from seeking bond. Petitioner is likely to

succeed on the merits of his claim that this interpretation of the INA is a clear violation of both his procedural and substantive due process rights. As an individual living within the United States for many years, he is entitled to due process of law. U.S. Const. amend. V; *see generally Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

In a procedural due process claim, the deprivation of liberty without adequate procedural safeguards is unconstitutional. *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). While the Supreme Court has been clear that for noncitizens "on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process..." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). It is well established that noncitizens who "once passed through our gates, even illegally" are entitled to greater constitutional protections. *Id.*; *see also Zadvydas*, 553 U.S. at 693.

Petitioner is not on the threshold of initial entry and is entitled to greater constitutional protection than those at the threshold of initial entry. Thus, the court should engage in the three-factor balancing test to determine a procedural due process violation, weighing: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, or additional or substitute procedural safeguards"; and (3) "the Government's interest." *Mathews*, 424 U.S. at 335.

Here, each of these factors weigh in Petitioner's favor and support a finding that he may not be detained without an opportunity to seek release on bond before an immigration

judge. First, he has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

Second, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Petitioner without any opportunity to challenge his detention before the administrative agency. *Lopez-Arevelo*, 2025 WL 2691828, at *10-11. Without a bond hearing, there is a high probability that Petitioner will remain detained even though his continued detention serves no non-punitive purpose.

Finally, while the government has an interest in ensuring Petitioner's appearance at any future removal proceedings and protecting the community, the bond procedures established under § 1226(a) adequately serve both interests by allowing an immigration judge to make an individualized assessment of a noncitizen's flight risk and any danger he may pose to the community. The government cannot plausibly justify denying a bond hearing based on "administrative burdens" when it has, for the past three decades, consistently provided bond hearings to noncitizens like Petitioner who have established a presence in the United States after previously entering without inspection.

As evidenced by a growing number of district courts across the country who have found that holding people like Petitioner in mandatory detention without a bond hearing likely constitutes a due process violation, Petitioner is likely to succeed on his procedural due process claim. *Hernandez-Fernandez v. Lyons, et al.*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025) (citing cases).

Likewise, Petitioner is likely to succeed on his substantive due process claim. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690.

The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993). Substantive due process "prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987). This substantive due process right to be free from arbitrary detention extends to noncitizens detained during removal proceedings. *Zadvydas*, 533 U.S. at 690 (permitting detention in non-punitive circumstances only where "special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint."). Petitioner has a fundamental interest in liberty and being free from official restraint. His detention without a bond hearing before a neutral arbiter to determine whether that continued detention is necessary to ameliorate any flight risk or protect the community violates his substantive due process rights.

B. Petitioner will suffer irreparable injury absent an injunction.

Civil detention that is punitive violates due process. *United States v. Hare*, 873 F.2d 796, 800 (5th Cir. 1989)). There is precedent, in the immigration context, for the principle that unlawful detention is a sufficient irreparable injury. *Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017). Moreover, Petitioner has been moved to a detention facility that does not have a manner for attorney/client communication. The facility is not listed on for any administrative control court, so it is unknown *how* a hearing can happen if the facility is not equipped with the ability to conduct hearings. Respondents continue to violate his due process rights every day that he remains detained in contravention of the INA without a bond hearing. Petitioner has established a likelihood of irreparable harm in the absence of injunctive relief in the form of release from detention or a bond hearing.

C. Balance of Equities and Public Interest

The final two factors of the preliminary injunction test "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009) While there is a recognized "public interest in prompt execution of removal orders," *Nken*, 556 U.S. at 436 "[w]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Fish v. Kobach*, 840 F.3d 710 (10th Cir. 2016)("There is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne. . . ").

Petitioner has established a likelihood of success on both statutory and his constitutional claims. Thus, there is no public interest to be served here where the government seeks to

detain an individual without the opportunity to seek a bond.

For the foregoing reasons, Petitioner requests that the Court enter a temporary restraining order, or in the alternative a preliminary injunction, directing Respondents to release him from detention or, in the alternative, to conduct an immediate bond hearing pursuant to 8 U.S.C. § 1226(a).

NO BOND IS WARRANTED UNDER RULE 65(c)

Finally, the Court should not require Petitioner to provide security prior to issuing an injunction. Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The Court has wide discretion on bond and "if there is an absence of proof showing a likelihood of harm, certainly no bond is necessary." *Cont'l Oil Co. v. Frontier Ref. Co.*, 338 F.2d 780, 783 (10th Cir. 1964). Here, because Petitioner is very likely to succeed on the merits and his harm outweighs any potential harm to Respondents, the Court should waive the bond requirement. If a bond is ordered, it should be a de minimus $1.00.

CONCLUSION

Accordingly, Petitioner moves under Federal Rule of Civil Procedure 65 for the following order:

1. Declare that 8 U.S.C. § 1226(a) governs Petitioner's detention by U.S. immigration authorities;

2. Order that Petitioner be released from immigration custody or, alternatively, afforded a bond hearing as authorized under 8 U.S.C. § 1226(a) at which 8 U.S.C. § 1225(b)(2)(A) cannot be applied, DHS bears the burden of proof, and the immigration judge consider his ability to pay bond as part of the factors in setting bond; and

3. Grant further and additional relief as the Court deems just and appropriate.

Respectfully submitted this 15th day of January 2026,

s/Kelli J. Stump

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CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2026, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Robert J. Troester, U.S. Attorney
Western District of Oklahoma
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s/Kelli J. Stump
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