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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

LEONARDO LEYVA RAMIREZ, CASE NO.: 26-cv-00199

Petitioner,

v.

JUAN BALTASAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity; FIELD OFFICE DIRECTOR or ACTING FIELD OFFICE DIRECTOR, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement, in his official capacity; KRISTI NOEM, Secretary of the United States Department of Homeland Security, in her official capacity; PAMELA BONDI, Attorney General of the United States, in her official capacity; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; and DEPARTMENT OF HOMELAND SECURITY,

Respondents.
_____/

PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Petitioner-Plaintiff, LEONARDO LEYVA RAMIREZ ("Petitioner") moves for a temporary restraining order and preliminary injunction against Respondents-Defendants ("Respondents") pursuant to Rule 65 of the Federal Rules of Civil Procedure and the All Writs Act.

Respondents unlawfully jailed Petitioner at Immigration and Customs Enforcement's ("ICE") Denver Contract Detention Facility in Aurora, Colorado, on November 15, 2025.

Petitioner was reporting for a scheduled supervision appointment at an ICE field office in Miramar, Florida when his parole was revoked. ICE then brought Respondent to the Denver Contract Detention Facility located at 3130 N. Oakland Street, Aurora, Colorado. On January 7, 2025, through counsel, Petitioner requested a bond hearing before an immigration judge ("IJ"). On January 12, 2025, IJ Carbone of the Aurora Immigration Court orally denied Petitioner's Motion for Custody Redetermination because the court lacked jurisdiction to "redetermine the respondent's custody. *See Matter of Q. Li.*, 29 I&N Dec. 66 (BIA 2025)" and an order was entered by the IJ on January 14, 2025. *See*, Exhibit 1, Order of the IJ on Custody Redetermination. Petitioner remains in detention at the Denver Contract Detention Facility. *See*, Exhibit 2, ICE Detainee Locator.

Petitioner is charged as a noncitizen present in the United States who has not been admitted or paroled, who arrived in the United States at or near San Luis, California on August 27, 2022. 8 U.S.C. § 1182(a)(6)(A)(i). On August 30, 2022, Petitioner was issued a parole by the Department of Homeland Security ("DHS"). Since his parole was issued, Petitioner appeared at all immigration court hearings and all DHS/ICE reporting appointments. In fact, it was when he reported at an ICE filed office that he was taken into custody.

Petitioner's detention is unlawful. Courts overwhelmingly agree that ICE's authority to jail Petitioner is under 8 U.S.C. § 1226(a), not § 1225(b)(2). Respondents deny Petitioner release on bond under their erroneous, new interpretation of the Immigration and Nationality Act ("INA").

Respondents have been found to engage in the practice of transferring detainees in an attempt to strip a District Court of its jurisdiction to determine the legal justification for detention. *See, Öztürk v. Hyde*, No. 25-1019 (2d Cir. 2025).[1]

Accordingly, the Court should enjoin Respondents from transferring Petitioner outside this Court's jurisdiction while this action is pending.

I. Introduction

For nearly thirty years noncitizens that entered the country without inspection and who

[1] *See, also*, Exhibit 3, Declaration In Support Of Motion For Temporary Restraining Order

Respondents later detained for removal proceedings 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 insist that 8 U.S.C. § 1225 governs Petitioner's detention.

Under Respondents' new theory, despite having lived in the country for nearly 3 1/2 years, Petitioner is now "seeking admission" to the U.S. and thus subject to mandatory detention under § 1225(b)(2) because Respondents charge him as removable under 8 U.S.C. § 1182(a)(2)(6)(A)(i). 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. It is also wrong; Federal courts overwhelmingly agree.[2] "The language of ... § 1226 is ... clear[]. ... [it]

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[2] *Rodriguez-Vazquez v. Bostock*, No. 779 F.Supp.3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, *8 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.3d ---, 2025 WL 2084238, *9 (D. Mass. July 24, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025); *Escalante y. Bondi*, No. 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025) (adopted *sub nom O.E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025)); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D. N.Y. Aug. 8, 2025); *de Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (adopted without objection 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); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug 15, 2025); *Romero v. Hyde*, --- F.Supp.3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, Doc. 20 (D. Md. Aug. 24, 2025); *Benitez v. Noem*, No. 5:25-cv-02190, Doc. 11 (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump*, No. 3:25-dev-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, --- F.Supp.3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, --- F.Supp.3d --- , 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Palma Perez v. Berg*, --- F.Supp.3d --- , 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, No. 25-cv-02180-DMSMMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Doe v. Moniz*, No. 1:25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Sampiao v. Hyde*, --- F.Supp.3d ---, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizzaro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256, (E.D. Cal. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025; *Jimenez v. FCI Berlin, Warden et al.*, --- F.Supp.3d ---, 2025 WL 2639390 (D.N.H. Sept. 9, 2025); *Salcedo Aceros v. Kaiser et al.*, No 25-cv-06924-EMC (EMC), 2025 WL 2637503 (N.D. Ca. Sept. 12, 2025). *Garcia Cortes v. Noem et al.,* No. 1:25-cv-02677- CNS, 2025 WL 2652880 (D. of Colo. Sept. 16, 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Maldonado-Vazquez v. Freeley*, 2025 WL 2676082 (D. Nev. Sept 17, 2025); *Hassan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran-Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Campos-Leon v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Chafla et al. v. Scott, et al.*, 2:25-cv-00437-

applies to [noncitizens] already present in the [U.S.] ... [And] permits ... release on bond." *Jennings*, 583 U.S. at 303.

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 1. & 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 § 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.

SDN, 2025 WL 2688541 (D. of Maine Sept. 21, 2025); *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, --- F.Supp.3d ---, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Rivera Zuma v. Bondi, et.al.*, No. 25-cv-14626 (KSH) (D. NJ. Sept. 26, 2025); *Flores v. Noem et. al.*, 5:25-cv-02490-AB-AJR (C.D.Ca. Sept. 29, 2025); *Alves da Silva*, 25-cv-284-LM-TSM (D.NH Sept. 29, 2025).

10312, 10323 (Mar. 6, 1997) ("Inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond ... This procedure maintains the status quo.")

B. Defendant's New Illegal Mandatory Detention Policy

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-Vazquez*, 779 F. Supp. at 1244. Then, on May 22, 2025, the 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 ... ." According to DHS, noncitizens are now "ineligible for a [bond] hearing ... and may not be released" during removal proceedings.[3] The BIA published a precedential decision finding the same on September 5, 2025. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.LA. 2025). IJs at the Aurora Facility are now required to adopt this illegal interpretation of the INA's detention scheme. *Id.*

III. Legal Standard for Granting Preliminary Relief

Petitioner shows 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).

IV. Legal Argument- The Court Should Order Preliminary Relief

A. Petitioner is Likely to Succeed on the Merits

Respondents' policy violates the INA. As the Supreme Court explained, § 1225 is concerned "primarily [with those] seeking entry," i.e., cases "at the Nation's borders and ports of

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[3] *See*, Exhibit 4, "Interim Guidance Regarding Detention Authority for Applicants for Admission."

entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 297 & 287. In contrast, § 1226 applies to people who, like Petitioner, are "already in the country" and are detained "pending the outcome of removal proceedings." *Id.* at 289. The INA's plain text, canons of statutory construction, the statutes' legislative history, the implementing regulations, and decades of agency practice all support this conclusion. The Federal Courts agree. *Supra* n. 2.

1. Respondents' Policy Violates the INA

a. 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 noncitizens." *Rodriguez Vazquez*, 779 F.Supp.3d at 1258 (citation modified).

Second, "when Congress amends legislation, courts must presume it intends the change to have real and substantial effect." *Estrada v. Smart*, 107 F.4th 1254, 1268 (10th Cir. 2024) (cleaned up). That presumption applies here, given LRA's amendments to § 1226. *See Rodriguez Vazquez*, 779 F.Supp.3d at 1259 (quoting *Stone v. I.N.S.,* 514 U.S. 386, 397 (1995)). LRA's amendments explicitly provide that § 1226(a) covers people like Petitioner. This is because the "specific exceptions [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention." *Id.* 1259 (emphasis in original, citation modified). *See also, e.g., Diaz Martinez,* 2025 WL 2084238, at *7 ("if, as the Government argue[s], ... a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 [LRA] amendment would have no effect").

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.

b. The statutory structure of § 1225(b)(2), the textual limitations of § 225(b)(2), and canon against superfluity further demonstrate 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); *see also Lopez Benitez*, 2025 WL 2267803, at *7 (this is the "plain, ordinary meaning" of "seeking admission"). "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). 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 U.S.

Respondents reading of § 1225 would also render significant portions of § 1225 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 on 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"). 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). "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.'"" *Chafla*, 2025 WL 2688541, at *6.

The implementing regulation for § 1225(b) supports Petitioner's reading, noting that §1225(b) applies to "any arriving [noncitizen] who appears to the inspection officer to be inadmissible." 8 C.F.R. § 235.3 (emphasis added). "The regulation thus contemplates that 'applicants seeking admission' are a subset of applicants 'roughly interchangeable' with "arriving [noncitizens]." *Salcedo Aceros*, 2025 WL 2637503, at *10 (quoting *Martinez*, 2025 WL 2084238, at *6); See 8 C.F.R. § 1.2 (defining an arriving noncitizen as an applicant for admission "coming or attempting to come into the United States at a port-of entry"). While Petitioner is not lawfully admitted, he 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.

c. 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.

d. Respondents' policies violate longstanding EOIR regulations.

Respondents' view violates EOIR's regulations. Following the IRIRA, 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, he suffers not only the deprivation of his liberty but also disruption to his 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. OFA Royalties, LLC*, 486 F.Supp.2d 1237 (D. Colo. 2007).

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

In cases against the government, the balance of equities and the public interest typically merge. *See Nken v. Holder*, 556 U.S. at 436. 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.

D. Conclusion

For the foregoing reasons, Petitioner respectfully requests that this Court issue a temporary restraining order (1) enjoining Respondents from applying § 1225(b)(2)(A) against him; (2) enjoining Respondents from transferring him outside this Court's jurisdiction while this action is pending.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 19, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: 1/19/2026

Signed:

/s/ Angela Alvero
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VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts set forth in the foregoing DECLARATION IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER are true and correct.

Executed this 19th day of January, 2026.

/s/ Angela Alvero

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