UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-00286

EDUARDO GIOVANNI FLORES-VEGA,

Petitioner-Plaintiff

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
ROBERT HAGAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity,
TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity,
PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents-Defendants

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

Petitioner-Plaintiff Eduardo Giovanni Flores-Vega ("Plaintiff") moves for a temporary restraining order against Respondents-Defendants ("Defendants") pursuant to Rule 65 and the All Writs Act. Plaintiff is a civil immigration detainee at the Immigration and Customs Enforcement (ICE) Denver Contract Detention Facility in Aurora, Colorado ("Aurora 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 custody hearing within 7 days). The Court should further enjoin Defendants from transferring Plaintiff outside of the Court's jurisdiction while this matter is pending.

I. Introduction

For nearly thirty years noncitizens that entered the country without inspection and who Defendants later detained for removal proceedings were bond eligible. Defendants' 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). Defendants now erroneously insist that 8 U.S.C. § 1225 governs Plaintiff's detention.

Under Defendants' new theory, despite having lived in the country for years, Plaintiff is now "seeking admission" to the U.S. and thus subject to mandatory detention under § 1225(b)(2). This is a sharp contrast to Defendants' 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.[1] The "tsunami" of federal courts ruling in Plaintiff's favor, *Roa*, 2025 WL 2732923, at *1 (citation omitted), includes the Western District of Washington's grant of summary judgement to a class of incarcerated noncitizens presenting the same arguments Plaintiff does here. *Rodriguez Vazquez v. Bostock*, ---F.Supp.3d.---, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025).

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[1] *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Lopez v. Hardin*, 1:25-cv-830, (M.D. Fla. Sept. 25, 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923, at *1 (N.D. Cal. Sept. 25, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D. N.J. Sept. 26, 2025); *Savane v. Francis*, 1:25-cv-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Luna Quispe v. Crawford*, 1:25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *da Silva v. ICE*, 1:25-cv-00284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Santiago Helbrum v. Williams*, 4:25-cv-00349, WL (S.D Iowa, Sept. 30, 2025); *Belsai D.S. v. Bondi*, 0:25-cv-3682, 2025 WL 2802947 (D.Min.. Oct. 1, 2025); *Rocha v. Hyde*, 25-cv-12584, 2025 WL 2807692 (D.Mass. Oct. 2, 2025); *Guzman Alfaro v. Wamsley*, 2:25-cv-01706, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025); *Ayala Casun v. Hyde*, 25-cv-427, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Guerrero Orellana v. Moniz*, 25-cv-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Elias Escobar v. Hyde*, 25-cv-12620-IT, 2025 WL 28233324 (D. Mass. Oct. 3, 2025); *Echevarria v. Bondi*, 25-cv-03252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cordero Pelico v. Kaiser*, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Artiga v. Genalo*, 25-cv-5208, 2025 WL 2829434 (E.D.N.Y Oct. 5, 2025); *S.D.B.B. v. Johnson*, 1:25-cv-882, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Ledesma Gonzalez v. Bostock*, 2:25-cv-01401, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); *Mena Torres v. Wamsley*, C25-5772-TSZ, 2025 WL 2855739 (W.D. Wash. Oct. 8, 2025); *B.D.V.S. v. Forestal*, 25-cv-01968, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Eliseo A.A. v. Olson et al.*, 25-cv-3381 (JWB/DJF), 2025 WL 2886729 (D.Minn. Oct. 8, 2025); *Ortiz Donis v. Chestnut*, 1:25-cv-01228, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); *Mugliza Castillo v. Lyons*, 25-cv-16219, 2025 WL 2940990 (D. N.J. October 10, 2025); *Alejandro v. Olson,* 1:25-cv-02027, 2025 WL 2896348 (S.D. Ind.); *Singh v. Lyons*, 1:25-cv-01606, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025); *Teyim v. Perry*, 1:25-cv-01615, 2025 WL 2950183 (E.D. Va. Oct. 15, 2025); *Hernandez Hernandez v. Crawford*, 1:25-cv-01565-AJT-WBP, 2025 WL 2940702 (E.D. Va. Oct. 16, 2025); *Menjivar Sanchez v. Wofford*, 2025 WL 2959274 (C.D. Cal. Oct. 17, 2025); *Gonzalez v. Joyce*, 25-cv-8250 (AT), 2025 WL 2961626 (W.D.N.Y. Oct. 19, 2025);*Sanchez Alvarez v. Noem et al.*, 1:25-cv-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Polo v. Chestnut et al.*, 1:25-cv-01342 JLT HBK, 2025 WL 2959346 (E.D. Ca. Oct.17, 2025); *Chavez v. Director of Detroit Field Office et al.*, 4:25-cv-02061-SL, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *HGVU v. Smith et al.*, 25-cv-10931, 2025 WL2962610 (N.D. Ill. Oct. 20, 2025) *Da Silva v. Bondi*, No. 25-cv-12672-DJC, 2025 WL269163 (D. Mass. Oct. 21, 2025*); Buestan v. Chu,* No. 25-16034 (MEF), 2025 WL2972252 (D. N.J. Oct. 21, 2025); *Maldonado v. Baker,* No. 25-3084-TDC (D. Md. Oct. 21,2025); *Gonzalez Martinez v. Noem*, EP-25-cv- 430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Miguel v. Noem*, 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025); *Loa Caballero v. Baltazar et al.*, 25-cv-03120 2025, WL 2977650 (D. Colo Oct. 22, 2025); *Lopez Lopez v. Soto*, 2:25-cv-16303, 2025 WL 2987485 (D.N.J. Oct. 23, 2025); *Nava Hernandez v. Baltazar et al.*, 1:25-cv-03094, 2025 WL 2996643 (D. Colo. Oct. 24, 2025).

It also includes a decision by the only Circuit Court of Appeals to address Defendants' position, *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048 (7th Cir. 2025). Indeed, the issues here are not new. Judges in this District have unanimously found that Defendants' novel and unprecedented interpretation of the statute is illegal. *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, *4 (D. Colo. Jan. 15, 2026), ECF 16.[2]

I. 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 hearing i.e., a bond hearing, before an immigration judge (IJ) to present evidence that they are neither a flight risk nor a danger. *Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006). By contrast, people detained under § 1225(b) are subject to mandatory detention. *See Jennings*, 583 U.S. at 288; 8 U.S.C. § 1182(d)(5).

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[2] *E.g.*, *Mendoza Gutierrez v. Baltasar et al.,* 1:25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Moya Pineda v. Baltasar et al.*, 1:25-cv-2966, 2025 WL 3516291 (D. Colo. Oct. 20, 2025); *Loa Caballero v. Baltazar et al.*, 25-cv-03120, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Hernandez Vazquez v. Baltasar et al.,* 1:25-cv-3049 (D. Colo. Oct. 23, 2025); *Nava Hernandez v. Baltazar et al.*, 1:25-cv-03094, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Artola Aruaz v. Baltazar, et al.*, 1:25-cv-03260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025); *Cervantes Arredondo v. Baltazar, et al.*, 1:25-cv-03040-RBJ (D. Colo. Oct. 31, 2025); *De Domingo Campos v. Baltazar*, 25-cv-3062 (D. Colo. Nov. 13, 2025); *Ortiz Rosales v. Baltazar, et al.*, 25-cv-03275-GPG (D. Colo. Nov. 16, 2025); *Espinoza Ruiz v. Baltazar, et al.*, 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025); *Florez Marin v. Baltazar, et al.*, 25-cv-03697-PAB, 2025 WL 3677019 (D. Colo. Dec. 18, 2025); *Alfaro Orellana v. Noem et al.*, 25-cv-03976-PAB, 2025 WL 3706417 (D. Colo. Dec. 22, 2025); *Velasquez de Leon v. Baltazar et al.*, 1:25-cv-03805-RBJ, *5 n.4 (D. Colo. Dec. 22, 2025), ECF 19 (collecting cases); *Navas Medina v. Baltazar et al.*, 1:25-cv-03919-RMR (D. Colo. Dec. 29, 2025); *Rodriguez Rodriguez v. Baltasar et al.*, 1:25-cv-03961-GPG (D. Colo. Dec. 30, 2025); *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, *4 (D. Colo. Jan. 15, 2026), ECF 16 (attached as Plaintiff Exh. 1).

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. 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, Defendants applied § 1226(a) to people arrested in the interior after entry without inspection. Defendants 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 Board of Immigration

Appeals ("BIA") issued an unpublished decision affirming one Tacoma IJ's decision denying bond pursuant to § 1225(b)(2)(A).

After the unpublished BIA decision, in July 2025, DHS "in coordination with the [DOJ]" issued a memo stating, "effective immediately, it is the position of DHS" that anyone who entered without inspection is "subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE custody … ." 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.I.A. 2025). Despite the federal courts' resounding rejection of Defendants' new position, IJs at the Aurora Facility continue to apply Defendants' illegal interpretation of the INA's detention scheme, including claiming a lack of jurisdiction if DHS did not conduct an initial custody determination or if DHS does not present evidence of having conducted one.

c. Plaintiff is Eligible for Bond

Defendants claim that Plaintiff is jailed pursuant to the mandatory detention provision at § 1225(b). But that is wrong. Plaintiff has lived continuously in the United States for approximately twenty years. Defendants charge him with entering the United States without inspection and seek to remove him under 8 U.S.C. § 1182(a)(6)(A)(i) for having entered without inspection or parole. Plaintiff is a dedicated partner and father. He lives with his U.S. citizen partner and their three U.S. citizen children. He provides the primary financial, emotional, and physical support for his family. Plaintiff has no criminal history that would subject him to mandatory detention. In sum, Plaintiff is an excellent candidate for bond.

II. Legal Standard for Granting Preliminary Relief

[3] Plaintiff Exh. 2.

Plaintiff 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).

III. Legal Argument- The Court Should Order Preliminary Relief

A. Plaintiff is Likely to Succeed on the Merits

Defendants' 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 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 Plaintiff, 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. *Ugarte Hernandez*, 25-cv-04066-RBJ, ECF 16, *4 ("[T]he overwhelming majority of federal district courts to confront this question, *including every court in this District*, have found that noncitizens like petitioner are entitled to a bond hearing") (emphasis added); *See supra*, n.1 & n.2.

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

Application of § 1226(a) does not turn on whether a person was previously admitted to the country or whether DHS conducted an initial custody determination. 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), and includes no requirement that DHS conduct an initial custody

determination, 8 U.S.C. § 1226.[4] 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 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)(A), (D), (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 Plaintiff. *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 and who have had certain criminal encounters

[4] Nevertheless, it would be a due process violation should DHS fail to conduct an initial custody determination or refuse to present evidence of that determination. "In our society liberty is the norm." *U.S. v. Salerno*, 481 U.S. 739, 755 (1987). Incarcerating people without an initial review of whether that custody is necessary and then refusing to present the incarcerated person before a neutral adjudicator begs the question "whether the detention is not to facilitate deportation, or to protect against the risk of flight or dangerousness, but to incarcerate for other reasons." *Demore v. Kim*, 538 U.S. 510, 523–33 (2003) (Kennedy, J., concurring).

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). "[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). Defendants' 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); *Mendoza Gutierrez*, 2025 WL 2962908, *7 (same).

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 Plaintiff. 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"); *Mendoza Gutierrez*, 2025 WL 2962908, *7 (same).

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 Plaintiff'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 [Plaintiffs]." *Rodriguez Vazquez*, 779 F.Supp.3d, at 1259.

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

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

The Supreme Court has described the structure of § 1226 and § 1225 as distinguishing between the two basic groups of noncitizens. Section 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289. By contrast, § 1225(b)(2) mandatory detention applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Id.* at 287. The whole purpose of § 1225 is to define how DHS inspects,

processes, and detains people at the border. *See id.* at 297 ("[Section] 1225(b) applies primarily to [noncitizens] seeking entry into the [U.S.] …"). *See also* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29 (explaining the purpose of § 1225).

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

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

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

Lopez Benitez, 2025 WL 2267803, *7; *See also* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29; H.R. Rep. No. 104-828, at 209. *Diaz Martinez*, 2025 WL 2084238, at **6-7 (emphasis in original). "This active construction of the phrase 'seeking admission'" accords with the plain language in § 1225(b)(2)(A) by requiring that a person be an "applicant for admission" and "also [be] *doing* something" to obtain authorized entry. *Diaz Martinez*, 2025 WL 2084238, at **6-7 (emphasis in original); *Lopez Benitez*, 2025 WL 2267803, at *7 (this is the "plain, ordinary meaning" of

"seeking admission"). The statute's temporal focus on people "arriving" is evident in other respects too. Section 1225(b)(2)(C) addresses "[t]reatment of [noncitizens] *arriving* from contiguous territory" (emphases added). Section § 1225's focus is on people entering the U.S. *Mendoza Gutierrez*, 2025 WL 2962908, *5.

Defendants 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). Defendants' 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") (emphasis added). Defendants' interpretation renders both the examination officer and inspection requirements superfluous.

Second, it renders superfluous §1225(b)(2)(A)'s requirement that the noncitizen be "seeking admission." *Jimenez*, 2025 WL 2639390, at *8. The statute defines admission to mean "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an

immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). "While an applicant for admission has not been 'admitted' to the United States, it does not follow that an applicant for admission continues to be actively seeking . . . lawful entry." *Jimenez*, 2025 WL 2639390, at *8 (citation omitted). "If as the Government argues, all applicants for admission are deemed to be 'seeking admission' for as long as they remain applicants, then the phrase 'seeking admission' would add nothing to the provision" in § 1225(b)(2)(A). *Salcedo Aceros*, 2025 WL 2637503, at *10. Defendants' 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 Plaintiff'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. Defendants' reading of the statute is incorrect.

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

IIRIRA's legislative history also supports the conclusion that § 1226(a) applies to Plaintiff. 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 Plaintiff 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 [Plaintiff] were entitled to discretionary detention under [§] 1226(a)'s predecessor statute and Congress declared its scope unchanged … this background supports [Plaintiff's] position that he too is subject to discretionary detention." *Rodriguez Vazquez*, 779 F.Supp.3d at 1260; *Mendoza Gutierrez*, 2025 WL 2962908, *8.

4. Defendants' policies violate longstanding EOIR regulations.

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

Defendants incarcerate Plaintiff in jail-like conditions, causing harm that is immediate, ongoing, and cannot be remedied later. *Mendoza Gutierrez*, 2025 WL 2962908, at *9 (finding that the Plaintiff there "and other noncitizens like him" suffer irreparable harm because they are "being unlawfully detained without bond"). "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 Plaintiff 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. QFA 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. 418, 436 (2009). The government cannot claim injury from being enjoined from engaging in unlawful conduct. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); *Wages & White Lion, Inv., L.L.C. v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021); *L.G.*

v. Choate, 744 F. Supp. 3d 1172, 1182 (D. Colo. 2024) ("There is generally no public interest in … unlawful agency action"). Here, requiring the government to comply with the law and return to its prior bond-and-detention practices causes no cognizable harm. Courts have consistently recognized that "[t]he harm to the government is minimal" when an injunction prevents unlawful detention. *Rodriguez Vazquez*, 779 F.Supp.3d at 1262. By contrast, continued enforcement of the automatic stay regulation causes significant, irreparable harm to Plaintiff. Thus, both the equities and the public interest strongly favor preliminary relief.

IV. Immediate Release from All Forms of ICE Custody is the Appropriate Remedy.

"The very nature of the writ [of habeas corpus] demands that it be administered with the initiative and flexibility essential to ensure that miscarriages of justice within its reach are surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 291 (1969); *Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1269 (10th Cir. 2018) (same); *See Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy"). Petitioner seeks a remedy that adequately addresses Defendants' ongoing and repeated statutory and constitutional violations that keep him and others unlawfully in Defendants' custody. *Carafas v. LaValle*, 391 U.S. 234, 238 (1968) (the habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted").

That remedy is immediate release from all forms of ICE custody. "[T]he traditional function of the writ is to secure release from illegal *custody*." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (emphasis added). That includes release from 24/7 GPS monitoring, restrictions on movement, and reporting requirements. *Jones v. Cunningham*, 371 U.S. 236, 242 (1963) ("While petitioner's parole releases him from immediate physical imprisonment, it imposes conditions

which significantly confine and restrain his freedom; this is enough to keep him 'in custody' . . . within the meaning of the habeas corpus statute").

Considering Defendants' continued lawlessness in the face of this District's uniform denial of Defendants' position, n. 2, *supra*, the appropriate remedy in this case is for this Court to order immediate release without further conditions. That is particularly true considering Defendants' repeated refusal in this District to comply with federal courts ordering individuals released from ICE custody and Defendants refusal to release individuals after an IJ orders release pursuant to a federal court-ordered custody hearing. *See e.g.*, *Mendoza Gutierrez*, 2025 WL 2962908, ECF 36, 36-1 (D. Colo. filed Oct. 24, 2025) (noting ICE's refusal to release petitioner from incarceration despite the court ordering immediate release)[5]; *Navas Medina v. Baltazar, et al.*, 1:25-cv-03919-RMR, ECF 22 (D. Colo. filed Jan. 15, 2025) (noting ICE's noncompliance with the court's order to release petitioner from custody due to ICE's unauthorized and unilateral imposition of 24/7 GPS monitoring, check-ins, and restrictions on movement after release)[6]; *Ugarte Hernandez*, 25-cv-04066-RBJ, ECF 17 (D. Colo. filed Jan. 20, 2025) (noting ICE still had petitioner incarcerated five days after court ordering petitioner released on a previously issued IJ bond)[7]; *Velazquez de Leon*, 25-cv-03805-RBJ, ECF 20, 21(D. Colo. filed Jan. 5, 2025) (noting IJ ordered petitioner released on bond on Dec. 30, 2025 but as of Jan. 5, 2026 Defendants still prevented petitioner from paying bond)[8]; *Batz Barreno v. Baltasar*, ---F.Supp.3d---, 2026 WL 120253 (D. Colo. Jan. 15, 2026) (finding ICE's unilateral decision to keep noncitizen in custody through an ankle monitor after IJ ordered release on bond a due process violation). Given these local examples of Defendants'

[5] Plaintiff Exh. 3
[6] Plaintiff Exh. 4
[7] Plaintiff Exh. 5
[8] Plaintiff Exh. 6

continued due process violations despite court orders, this Court should order immediate release from custody.

Federal courts throughout the country have seen similar recalcitrance and refusal by Defendants to comply with federal court orders granting habeas relief. *See Diahn v. Lowe*, 1:24-cv-1936, 2026 WL 84576, *5 (M.D. Pa. Jan. 12, 2026) (ordering ICE to remove ankle monitor it had unilaterally imposed after IJ granted bond without further conditions); *Orellana Juarez v. Moniz*, 788 F.Supp.3d 61, 70 (D. Mass 2025) (same, finding this presented a "real constitutional risk" and defeated the purpose of neutral third-party review of custody); *Menijvar Sanchez v. Wofford*, 1:25-cv-01187, 2025 WL 3089712, *9 (E.D. Cal. Nov. 5, 2025) (same in preliminary injunction); *N-N- v. McShane*, 25-cv-5494, 2025 WL 3143594, *4 (E.D. Pa. Nov. 10, 2025) (finding ICE's unilateral imposition of an ankle monitor, check-ins, and travel restrictions, which the IJ did not order in setting bond, violated due process and the *Accardi* doctrine).

Indeed, habeas courts have questioned whether Defendants will comply with their orders to even hold a custody hearing or conduct a custody hearing correctly. *Gomez Rodriguez v. Noem*, 2:25-cv-01115, 2025 WL 3771268, *2 (M.D. Fla. Dec. 31, 2025) (noting that "[i]n other cases before this Court, the Defendants have claimed they cannot direct EOIR when to conduct a bond hearing" and ordering release if the government does not comply); *Khogiani v. Raycraft*, 25-cv-13744, 2025 WL 3753532, *4 (E.D. Mich. Dec. 29, 2025) (noting the government's argument that given the "overwhelming caseload" in the immigration courts, it likely could not comply with an order to hold a bond hearing within five days); *Vargas v. Bondi*, 25-cv-1023, 2025 WL 3300446, *5 (W.D. Tex. Nov. 12, 2025), *report and recommendation adopted*, 25-cv-1023, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025) (recommending immediate release in part because Defendants argued that "if this Court ordered a hearing, it would require an immigration judge to do that which,

in light of BIA precedent, the judge would not believe he had any authority to do"); *Cervantes Arredondo*, 1:25-cv-03040-RBJ, ECF 26 (D. Colo. Dec. 18, 2025); (granting motion to enforce due to Colorado IJ's failure to properly apply the burden of proof to DHS as required by the Court's habeas order).

Making matters worse, even if Defendants hold a custody hearing and bond is granted, Defendants have resorted to a new unlawful tactic of automatically staying the IJ's bond order through its unilateral and unchecked invocation of 8 C.F.R. § 1003.19(i)(2), colloquially known as the "autostay" or "automatic stay" provision. Dozens of courts have granted habeas relief and ruled that the automatic stay provision violates due process and ordered Defendants to allow petitioners to post bond. *E.g.*, *M.P.L. v. Arteta*, 25-cv-5307, 2025 WL 3288354, *7 (S.D.N.Y. Nov. 25, 2025) (noting that "at least 50 district court decisions across the United States in the last 6 months alone" have found that DHS' use of the automatic stay violates or likely violates due process and collecting cases at n.6). This District just joined the national consensus. *Merchan-Pacheo*, 1:25-cv-03860-SBP, 2026 WL 88526 (D. Colo. Jan. 12, 2026) (finding, *inter alia*, "that the automatic stay regulation, 8 C.F.R. § 1003.19 (i)(2), violates Petitioner's procedural due process rights under the Fifth Amendment").[9]

[9] In *Merchan-Pacheo*, the court expressed grave concerns regarding ICE's tactics to unlawfully keep noncitizens in its custody, finding that "[a]lthough the court need not reach this issue here, the court is also not convinced that DHS has stayed within the bounds of its intended authority in recent months in implementing the stay. For instance, the court notes that despite the Attorney General's statement that the automatic stay provision exists to enable DHS "to invoke the automatic stay with respect to aliens whom it believes are potentially dangerous, or are at risk of absconding prior to the conclusion of removal proceedings, or whose cases DHS believes otherwise present important considerations calling for detention during the course of removal proceedings," 71 Fed. Reg. 57873, no such concerns have been cited here, and *it is clear that over the last few months, the automatic stay provision has been invoked across a much broader array of cases than this language would support*. Indeed, Respondents' arguments here, as well as DHS's current practices, suggest that DHS's new operating theory is that nearly *all* noncitizens subject to removal proceedings are properly subject to mandatory, rather than discretionary, detention, and

In sum, the appropriate remedy here is for this Court to grant the petition and order immediate and full release from custody considering Defendants' unconstitutional application of the statute, failure to follow district court orders, failure by EOIR and by IJs to give effect to the orders of the district court regarding the proper allocation of the burden of proof, ICE's unilateral override of bond grants through DHS's use of the autostay regulation, and tactics of claiming no jurisdiction because DHS failed to or claims inability to find proof of conducting a custody determination. Any other remedy falls short and fails to satisfy the writ's "very nature" to cure "miscarriages of justice" that must be "corrected." *Harris*, 394 U.S. at 291.

V. Assuming *arguendo*, the Court Orders a Custody Hearing Instead of Immediate Release, Which It Should Not, Strong Procedural Protections are Necessary in the Custody Hearing.

If the Court does not order immediate release, in the alternative it should maintain jurisdiction over this habeas petition and hold its own custody hearing. This is the most efficient remedy rather than ordering an IJ to conduct a hearing that, as discussed *supra*, may lead to Petitioner remaining unlawfully in Defendants' custody. Courts have increasingly settled on this remedy considering the Constitutional issues presented and Defendants' recalcitrance or unwillingness to follow the law. *See e.g.*, *L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405–07 (E.D.N.Y. 2025) (noting the federal courts' expertise in constitutional matters and its concern with "how expeditiously and effectively an IJ will be able to hold a bond hearing"). *Flores-Powell v.*

DHS now appears to be nearly universally implementing the automatic stay with regard to immigration judges' rulings granting petitioners bond, rather than implementing the stay in cases where "important considerations" might call for detention. *See, e.g.*, *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 2782499, at *5 (W.D. Wash. Sept. 30, 2025) (noting that DHS issued a memorandum to all ICE employees on July 8, 2025 which states that "DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities" and has determined "that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for *all* applicants for admission") (emphasis added)." *Id* at fn. 7.

Chadbourne, 677 F.Supp.2d 455, 474–78 (D. Mass. 2010); *Santos v. Lowe*, 1:18-cv-1553, 2020 WL 4530728, *4 (M.D. Pa. Aug. 6, 2020); *Ramirez v. Watkins*, 10-cv-126, 2010 WL 6269226, **19–20 (S.D. Tex. Nov. 3, 2010, *rep. and rec not reached*, (S.D. Tex. Dec. 8, 2010).

Whether this Court conducts the custody hearing or orders the IJ do conduct the hearing, this Court should require that any custody hearing follow strict constitutional protections. Those protections should include, at a minimum, that Defendants carry a clear and convincing evidence burden to show that continued custody—whether it be incarceration or any alternatives to detention like 24/7 GPS monitoring, check-ins, or movement restrictions—is necessary. That is particularly true where, as here, Defendants' basis for incarcerating Plaintiff was a due process violation on day one. *Velazquez de Leon*, 1:25-cv-03805-RBJ, *8 ECF 19 (placing a clear and convincing evidence burden on Defendants because "mandatory detention under the wrong statute constitutes an ongoing due process violation, infringing on [Petitioner's] core liberty interest"). Courts across the country now consider that protection the norm. *See Gomez v. Olson*, 25-cv-15300, 2025 WL 3768242, *6 (N.D. Ill. Dec. 31, 2025) (noting the "overwhelming consensus" that the burden in a court-ordered bonded hearing should be placed on the government). Courts in this District agree. *E.g., Mendoza Gutierrez*, 2025 WL 2962908, *10; *Navas Medina*, 1:25-cv-03919-RMR, *9, ECF 17; *Espinoza Ruiz*, 2025 WL 3294762, *2; *Velazquez de Leon*, 1:25-cv-03805-RBJ, *8, ECF 19; *See also LG v. Choate*, 744 F.Supp.3d. 1172, 1186 (D. Colo. 2024) (finding that due process requires the government to meet a clear and convincing evidence burden to continue detention under § 1226(a)).

Due process protections should also require an IJ to consider the Petitioner's ability to pay when setting an amount of bond. *Salerno*, 481 U.S. at 754 ("bail must be set by a court at a sum designed to [prevent flight] and no more") (citation omitted); *Hernandez v. Sessions*, 872 F.3d 976,

991 & n.4 (9th Cir. 2017) ("a bond determination that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests"); *Hernandez, et.al. v. Garland et.al.*, No. EDCV 16-620 JGB (KKx), 2022 WL 1176752 (C.D. Cal. Mar. 28, 2022) (settlement agreement delineating that DHS must consider financial circumstances and ability to pay bond); *Sheikh v. Choate*, 1:22-cv-01627-RMR, 2022 WL 17075894, * 5 (D. Colo. Jul. 27, 2022) (grant of habeas corpus ordering a bond hearing at which IJ must consider ability to pay); *Viruel Arias v. Choate*, 1:22-cv-02238-CNS, 2022 WL 4467245, *5 (D. Colo. Sept. 26, 2022) (ordering the IJ to "meaningfully consider alternatives to imprisonment such as community-based alternatives to detention including release, parole, as well as [petitioner's] ability to pay a bond"); *Lopez-Romero v. Lyons*, 2:25-cv-01113, 2026 WL 92873, *7 (D.N.M. Jan. 13, 2026) (same).

Finally, due to Defendants' frequent and unlawful use of the autostay provision, any order requiring a custody hearing at which bond is granted should explicitly enjoin the government from invoking the automatic stay based on Defendants' unlawful interpretation of the statute. *E.g.*, *Perez-Regalado v. Feeley*, 2:25-cv-02409, 2026 WL 36112, *6 (D. Nev. Jan. 6, 2026); *Rueda Torres v. Francis*, 25-cv-8408, 2025 WL 3168759, *6 (S.D.N.Y. Nov. 13, 2025); *Garay v. Perry*, 1:25-cv-2215, 2025 WL 3540070, *4 (E.D. Va. Dec. 10, 2025). This district has already found the autostay provision unlawful, *Merchan-Pacheo*, 2026 WL 88526, and "[a]t least 50 district court decisions across the United States in the last 6 months alone" have found that "DHS's application of the automatic stay . . . violates . . . due process under the Fifth Amendment." *M.P. L. v. Arteta*, 25-cv-5307-VSB, 2025 WL 3288354, *7 (S.D.N.Y. Nov. 25, 2025).

VI. Conclusion

Accordingly, the Court should grant a temporary restraining order (or preliminary injunction) requiring either Plaintiff's immediate release from all forms of custody, including, *inter alia*, incarceration, GPS 24/7 monitoring, in-person or telephonic check-ins, or restrictions on movement; or, in the alternative, ordering that this Court conduct a custody hearing pursuant to § 1226(a) at which: (1) DHS must carry a clear and convincing evidence burden to show that continued custody—whether it be incarceration or alternatives to detention like 24/7 GPS monitoring, reporting requirements, or restrictions on movement—is necessary; (2) the Court must consider Petitioner's ability to pay; and (3) the Court must issue an order preventing Defendants from invoking the autostay provision should bond be granted or arguing that this Court cannot consider Plaintiff's custody due to DHS' alleged failure to conduct an initial custody determination.

In the alternative, Plaintiff requests this Court order Defendants to bring Plaintiff before an IJ within seven days for a custody hearing pursuant to § 1226(a) where the IJ must implement specific constitutional protections including: (1) placing a clear and convincing evidence burden on Defendants to show that continued custody—whether it be incarceration or alternatives to detention like 24/7 GPS monitoring, reporting requirements, or restrictions on movement—is necessary; and (2) consider Petitioner's ability to pay. The Court should also enjoin Defendants from unilaterally imposing additional forms of custody like 24/7 GPS monitoring, reporting requirements, or restrictions on movement unless this Court or an IJ orders those conditions after Defendants convinced this Court or an IJ by clear and convincing evidence that they are necessary. The Court should also enjoin Defendants from invoking the autostay provision should bond be granted or arguing that this Court or the IJ cannot consider Plaintiff's custody due to DHS' alleged failure to conduct an initial custody determination.

The Court should further enjoin the Defendants from transferring Plaintiff outside the District of Colorado during the pendency of this litigation.

Respectfully submitted,

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CERTIFICATE OF CONFERRAL

I hereby certify, consistent with D. Colo. Local Rule 7.1, that I conferred via email with counsel for Defendants-Defendants, Kevin Traskos of the US Attorney's Office for the District of Colorado regarding the relief requested herein. Defendants-Defendants oppose this motion.

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CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on January 23, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Jackie Alderete, hereby certify that I will mail a hard copy

of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail by January 27, 2026, or sooner pursuant to any forthcoming Court order. Kevin Traskos of the U.S. Attorney's Office agreed to accept service on behalf of all Defendants.

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