IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-00385-DDD

JOSE LARA MEJIA,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Aurora Contract Detention Facility, in his official capacity; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; ROBERT GUADIAN, Director of the Denver Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, in his official capacity; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; PAMELA BONDI, Attorney General of the United States, in her official capacity; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity; and U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents.

PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

Petitioner Jose Lara Mejia has been present in the United States since 1999 without lawful immigration status. The Department of Homeland Security (DHS) initiated removal proceedings against him by serving a Notice to Appear on January 27, 2026, charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for entry without inspection, and those proceedings remain pending before the Executive Office for Immigration Review. On January 26, 2026, he was detained under Immigration and Customs Enforcement (ICE) authority and is being held without the possibility of bond redetermination pursuant to new DHS policy and new Board of Immigration Appeals (BIA) precedent. *See Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025).

This detention is unlawful because—as courts throughout the country have found—DHS/ICE's new mandate is contrary to law. Defendants are detaining Petitioner under the wrong statute—8 U.S.C. § 1225, which provides for mandatory detention for aliens "seeking admission into the country." But Petitioner is not "seeking admission" into the United States and therefore § 1225 is inapplicable. Rather, because he has been in the country for years, Petitioner is an alien "already in the country pending the outcome of removal proceedings" under 8 U.S.C. § 1226. It is therefore § 1226 that applies to Petitioner, and provides him the right to a bond hearing to seek release during the continuation of his removal proceeding.

To protect his rights and to preserve the status quo, Petitioner has filed Petition for Writ of Habeas Corpus (the "Petition") and seeks a temporary restraining order (i) barring his transportation out of the Court's jurisdiction, (ii) ordering his immediate release from custody,

and (iii) barring Respondents from interfering with the adjudication of his pending application for adjustment of status.[1]

FACTUAL BACKGROUND

Petitioner

Petitioner has been continuously present in the United States without lawful immigration status since March 22, 1999, and has been pursuing legal permanent resident status since 2019 based on a charge of entry without inspection under 8 U.S.C. § 1182(a)(6)(A)(i). (Declaration of Samantha D. Wolfe in Support of Petitioner's Motion for a Temporary Restraining Order (Wolfe Decl.) ¶¶ 3, 16.)

On January 26, 2026, in Cheyenne, Wyoming, Petitioner's vehicle was struck by driver who ran a red light. (Wolfe Decl. ¶ 7, Ex. B.) Local law enforcement responded to the accident and contacted ICE. ICE subsequently arrested Petitioner.

On January 27, 2026, DHS initiated removal proceedings by serving Petitioner with a Notice to Appear on January 27, 2026, and his removal proceedings remain pending. (Wolfe Decl. ¶ 5, Ex. A.) DHS charges Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) on the sole ground that he entered the United States without inspection.

Petitioner has significant, longstanding equities in the United States and is actively pursuing lawful permanent resident status. Petitioner's criminal history is limited to two decades-old Colorado misdemeanor convictions. In 2003, Petitioner was convicted in Colorado state court of possession of a Schedule V controlled substance (Morpholine). (Wolfe Decl. ¶ 12, Ex.

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[1] Through his Petition, Petitioner also seeks other relief in the alternative, including on order for Respondents to provide him with a bond hearing under 8 U.S.C. § 1226 within seven (7) days.

C.) In 2004, Petitioner was convicted in Colorado state court of harassment, a misdemeanor. Both convictions occurred more than twenty years ago. (Wolfe Decl. ¶ 13, Ex. D.) Since that time, Petitioner has not incurred any additional arrests or convictions and has lived a law-abiding life in the United States.

These convictions and their dispositions were fully disclosed and considered in connection with Petitioner's application for lawful permanent resident status. On February 12, 2020, Petitioner became the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by his United States citizen spouse and approved on February 12, 2020. (Wolfe Decl. ¶ 17, Ex. E.) On October 5, 2024, Petitioner received approval of a Form I-601A, Application for Provisional Unlawful Presence Waiver. (Wolfe Decl. ¶ 18, Ex. F.)

Petitioner is not statutorily barred from pursuing lawful permanent resident status based on these convictions. Since the 2024 approval of the I-601A waiver, Petitioner has been awaiting scheduling of a consular interview to complete immigrant visa processing and obtain lawful permanent resident status. As of October 2024, Petitioner has remained in this posture solely due to agency processing delays. (Wolfe Decl. ¶ 19, Ex G.)

Petitioner is in custody the Aurora Contract Detention Facility in Aurora, Colorado. (Wolfe Decl. ¶ 27.) He filed his Petition with this Court on January 30, 2026.

Notice to Respondents

Upon filing the Petition on January 30, 2026, counsel of record contacted by email the Civil Chief of the United States Attorney's Office for the District of Colorado, providing him with a courtesy copy of the Petition and draft summonses for the Respondents. (Wolfe Decl.

¶ 24.) The Civil Chief responded and corresponded with counsel about this District's procedures for service in habeas cases. (Wolfe Decl. ¶ 25.)

On February 2, 2026, Petitioner's counsel also contacted the Aurora Contract Detention Facility, informing it of the Petition, attaching copies of the Petition and draft summonses, and requesting that Petitioner not be moved during the pendency of these proceedings. (Wolfe Decl. ¶ 26, Ex. H.)

LEGAL BACKGROUND

Immigration Law

For over a century, the United States has distinguished between noncitizens seeking entry into the country, on the one hand, and those already residing within it, on the other hand. Noncitizens "stopped at the boundary line" who have "gained no foothold in the United States," *Kaplan v. Tod*, 267 U.S. 228, 230 (1925), do not enjoy the same constitutional protections afforded to noncitzens who were able to make it inside the United States, *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Once a noncitizen enters the United States, "the legal circumstance changes," for the constitutional right to due process applies to all "persons" within our Nation's borders, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. This distinction between noncitizens who have entered and reside in the United States and those who have not yet entered "runs throughout immigration law." *Id.*

This principle led to the creation of two distinct statutory schemes for the detention of noncitizens: 8 U.S.C. § 1225 for noncitizens "seeking admission into the country," and 8 U.S.C. § 1226 for those "already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). While section 1225(b) mandates detention without bond

hearings (except for narrow humanitarian parole), § 1226 provides for discretionary detention with bond hearings, allowing release for detainees who pose no danger, security threat, or flight risk. *See Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017); *Garcia Abanil v. Baltazar*, No. 25-cv-4029-WJM-STV, 2026 LX 7440 *2-3 (D. Colo. Jan. 14, 2026).

In 2025, however, DHS/ICE "abandoned this approach, sweeping all noncitizens who entered without inspection into § 1225(b)(2)(A)'s mandatory detention net—regardless of how long they have lived here." *Ibarra v. Knight*, Case No. 1:25-cv-00597-BLW, 2025 LX 517197, *2 (D. Idaho Nov. 19, 2025). This change—endorsed by the BIA in *Matter of Yajure Hurtado*—ignores the applicable statutory framework and effectuates a Government policy to keep thousands in detention without bond hearings, including Petitioner, regardless of whether they are "seeking admission" or already "in country."[2]

DHS/ICE's maneuver has been challenged across the country, and the vast majority of courts addressing the issue have rejected the agencies' attempted expansion of § 1225(b)(2)(A)'s mandatory detention to noncitizens already residing in the country. *See, e.g.*, **First Circuit**: *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 LX 250082 (D. Mass. July 7, 2025); *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025); *Romero v. Hyde*, 795 F. Supp. 3d 271 (D. Mass. 2025); *Orellana v. Moniz*, 802 F. Supp. 3d 297 (D. Mass. 2025); *Jimenez v. FCI Berlin*, 799 F. Supp. 3d 59 (D.N.H. 2025); *Sampiao v. Hyde*, 799 F. Supp. 3d 14 (D. Mass. 2025); **Second**

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[2] As noted in the Petition, several district courts have certified class actions for individuals wrongfully detained under § 1225(b)(2)(A). *See, e.g.*, *Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 U.S. Dist. LEXIS 229826 (D. Colo. Nov. 21, 2025). The class action decisions are on appeal, including to the Tenth Circuit Court of Appeals. Petitioner is a member of a certified classes in those lawsuits and is entitled to the same rights as other members of class.

Circuit: *Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 LX 542178 (S.D.N.Y. Nov. 26, 2025) (collecting 362 district court opinions nationwide and noting that challengers prevailed in at least 350 of them, in decisions by over 160 judges across 50 courts); *Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025); *Samb v. Joyce*, 2025 LX 386316 (S.D.N.Y. Aug. 19, 2025); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 LX 472568 (E.D.N.Y. Oct. 6, 2025); *Ortiz v. Freden*, No. 25-CV-960-LJV, 2025 LX 423196 (W.D.N.Y. Nov. 4, 2025); **Third Circuit:** *Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036 (D.N.J. Sep. 26, 2025); *Cantu-Cortes v. O'Neill*, No. 25-cv-6338, 2025 LX 545973 (E.D. Pa. Nov. 13, 2025); **Fourth Circuit**: *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 LX 327685 (D. Md. Aug. 24, 2025); *Hasan v. Crawford*, 800 F. Supp. 3d 641 (E.D. Va. 2025); **Fifth Circuit:** *Kostak v. Trump*, No. 3:25-1093, 2025 LX 395222 (W.D. La. Aug. 27, 2025); *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 LX 444893 (S.D. Tex. Oct. 8, 2025); **Sixth Circuit**: *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771 (E.D. Mich. 2025); *Reyes v. Raycraft*, No. 25-cv-12546, 2025 LX 332553 (E.D. Mich. Sep. 9, 2025); *Barrera v. Tindall*, Civil Action No. 3:25-cv-541-RGJ, 2025 LX 435572 (W.D. Ky. Sep. 19, 2025); **Seventh Circuit**: *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 LX 407868 (S.D. Ind. Oct. 11, 2025); **Eighth Circuit**: *Anicasio v. Kramer*, No. 4:25CV3158, 2025 LX 325849 (D. Neb. Aug. 14, 2025); *Jacinto v. Trump*, 796 F. Supp. 3d 584 (D. Neb. 2025); *Perez v. Berg*, 798 F. Supp. 3d 955, 960 (D. Neb. 2025); **Ninth Circuit:** *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 LX 303800 (D. Ariz. Aug. 11, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789, 2025 LX 342294 (C.D. Cal. Aug. 15, 2025); *Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 LX 381081 (N.D. Cal. Aug. 21, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 LX 390497 (S.D. Cal. Sep. 3, 2025); *Zaragoza*

Mosqueda v. Noem, No. 5:25-cv-02304, 2025 LX 343661 (C.D. Cal. Sep. 8, 2025); *Ibarra*, 2025 LX 517197; *Orellana v. Henkey*, No. 1-26-cv-00013-AKB, 2026 LX 88110 (D. Idaho Jan. 26, 2026); *Macias v. Henkey*, No. 1:25-cv-00741-BLW, 2026 LX 12144 (D. Idaho Jan. 27, 2026); **Tenth Circuit:** *Diallo v. Baltazar*, No. 1:25-cv-3548-SKC, 2026 LX 70730 (D. Colo. Jan. 29, 2026); *Hernandez v. Baltazar*, No. 1:25-cv-3688-SKC-SBP, 2025 LX 505411 (D. Colo. Dec. 23, 2025); *Rodriguez v. Castro*, No. 2:25-cv-01294-KG-JFR, 2026 U.S. Dist. LEXIS 19309, at *8 (D.N.M. Jan. 30, 2026); *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 LX 465474 (D.N.M. Sep. 17, 2025); *Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 LX 491429 (D. Colo. Sep. 16, 2025); **Eleventh Circuit:** *Garcia v. Noem*, No. 2:25-cv-00879-SPC-NPM, 2025 LX 400655 (M.D. Fla. Oct. 31, 2025); *Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 LX 451385 (S.D. Fla. Oct. 15, 2025); *Gonzalez v. Sterling*, No. 1:25-CV-6080-MHC, 2025 LX 501591 (N.D. Ga. Nov. 3, 2025).[3]

Federal judges in the District of Colorado have joined the majority. Just last month, for example, Senior U.S. District Judge William Martinez "join[ed] his colleagues in this District and those courts across the country" in finding that DHS/ICE's policy was unlawful. *Garcia Abanil*, 2026 LX 7440 at *16. He wrote: "Respondents' interpretation of § 1225(b)(2)(A) is contrary to the [Immigration and Nationality Act (INA)]'s plain text. As a consequence, the Court also concludes that [petitioner's] detention pursuant to § 1225(b)(2)(A) violates the INA, and that he is instead properly considered to be detained under § 1226(a)." *Id.*

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[3] Petitioner only is aware of a handful of cases in which courts have accepted the Government's position. *See, e.g.*, *Lopez v. Trump*, 802 F. Supp. 3d 1132 (D. Neb. 2025); *Chavez v. Noem*, 801 F. Supp. 3d 1133 (S.D. Cal. 2025); *see also Mercado*, 2025 U.S. Dist. LEXIS 232876, at *33 (S.D.N.Y. Nov. 26, 2025).

Colorado district courts have also concluded that this violation of the INA is a violation of the Fifth Amendment's due process clause. As one court explained:

> [b]ecause this Court holds that § 1226 governs [p]etitioner's detention, the due process owed to [p]etitioner is that provided for in § 1226—namely, an individualized bond hearing before an IJ. Having erroneously concluded that Petitioner was mandatorily detained under § 1225, the IJ in [p]etitioner's case declined to make an individualized assessment of whether [p]etitioner posed any danger to the community, threatened national security, or was at risk of flight. Thereafter, [p]etitioner's continued detention without the bond hearing that should have been provided to him pursuant to § 1226 constitutes an ongoing violation of his constitutional right to due process.

Arostegui-Maldonado v. Baltazar, 794 F. Supp. 3d 926, 941-43 (D. Colo. 2025) (cleaned up) (quoted in *Garcia Abaril*, 2026 LX 7440 at *18).

Legal Standard To Obtain a Temporary Restraining Order

The function of a temporary restraining order (or preliminary injunction) is "to preserve the status quo pending a final determination of the rights of the parties." *Lundgrin v. Claytor*, 619 F.2d 61, 63 (10th Cir. 1980). The moving party must show (1) substantial likelihood that the movant will eventually prevail on the merits; (2) a showing that the movant will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) a showing that the injunction, if issued, would not be adverse to the public interest." *Id.*

ARGUMENT

The Court should grant Petitioner's requested temporary restraining order because he satisfies all of the necessary factors required. He also does not need to exhaust any administrative remedies given the BIA's position under *Matter of Yajure-Hurtado*.

I. Petitioner Is Entitled To A Temporary Restraining Order.

A. Petitioner Is Likely to Succeed on the Merits of His Claims.

Petitioner is likely to succeed on his claims that he is improperly detained under 8 U.S.C. § 1226(a), not § 1225(b)(2)(A). He has been residing in the United States for years and has not sought admission. The text, context, and legislative and statutory history of the INA all demonstrate that § 1226(a) therefore governs his detention. *See Jennings*, 583 U.S. at 289 (stating that § 1226 governs detention of noncitizens "already in the country pending the outcome of removal proceedings"). In turn, through this violation of the INA, Respondents are also violating Petitioner's Fifth Amendment due process rights. *Arostegui-Maldonado*, 794 F. Supp. 3d at 941–43.

1. The Text of 8 U.S.C. § 1226 Demonstrates That it Governs Petitioner's Detention.

First, the plain text of § 1226 demonstrates that its subsection (a) applies to Petitioner. By its own terms, § 1226(a) applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). Section 1226(c) goes on to confirm that this authority includes not just persons who are deportable, but also noncitizens who are inadmissible.[4] This is because § 1226(c) carves out specific categories of noncitizens—including certain categories of inadmissible noncitizens—who are subject to mandatory detention. *See, e.g., id.* § 1226(c)(1)(A), (C). But if the BIA's precedential decision in *Matter of Yajure Hurtado* is correct—*i.e.*, if § 1226(a) did not cover inadmissible noncitizens—

[4] Grounds of deportability apply to people who have been previously admitted to the United States, such as visa holders or permanent residents, while grounds of inadmissibility apply to those who have not been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020).

there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, it would have only needed to address people who are deportable for certain offenses. *Cf. Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

Recent amendments to § 1226 reinforce that this section covers people like Petitioner, whom DHS alleges to have entered without inspection. The Laken Riley Act added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) *and* who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress further clarified that, by default, § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is *only* charged as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention.

In *Matter of Yajure Hurtado*—the decision relied upon by DHS/ICE to improperly detain Petitioner—the Board suggests that any contradiction shown by Congress' amendment of § 1226(c) is indicative not of any errors in its reasoning, but rather, of Congress' mistake. *See Matter of Yajure Hurtado* at 222 (citing *Barton v. Barr*, 590 U.S. 222, 239 (2020) ("redundancies

are common in statutory drafting — sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication," —"[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text")).

Not only does this interpretation fly in the face of the plain text inclusion of inadmissible persons in section 1226(a), it also runs up against the canon against superfluities. Under this "most basic [of] interpretive canons, . . . '[a] statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.'" *Corley v. United States*, 556 U.S. 303, 314 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)); *see also Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) ("[C]ourt[s] 'must interpret the statute as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.'" (citation omitted)). But by concluding that the mandatory detention provision of § 1225(b)(2) applies to individuals like Petitioner, the BIA violates this rule. That is because if § 1225(b)(2) covers all individuals charged as inadmissible under § 1182(a)(6) or (a)(7) (and who are not in expedited removal), then § 1226(c)(1)(E) would be meaningless as such individuals would already be subject to mandatory detention under § 1225(b)(2).

In sum § 1226's plain text demonstrates that § 1225(b)(2) should not be read to apply to everyone who is in the United States "who has not been admitted," 8 U.S.C. § 1225(a)(1). Section 1226(a) covers those who are not now seeking admission but instead are already residing in the United States—including those who are charged with inadmissibility—while § 1225(b)(2)

covers only those "seeking admission"—*i.e.*, those who are apprehended upon arrival in the United States (and who are not subject to the procedures of § 1225(b)(1)). A contrary interpretation would ignore § 1226(a)'s plain text and structure and render meaningless § 1226(c)'s language that specifically addresses individuals who have entered without inspection.

2. The Text of 8 U.S.C. § 1225 Demonstrates That it Does Not Govern Petitioner's Detention.

The plain language of § 1225 reinforces the conclusion that it is § 1226 that applies to Petitioner. As the Supreme Court has recognized, § 1225 is concerned "primarily [with those] seeking entry," *Jennings*, 583 U.S. at 297 (2018)—*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," *id.* at 287. Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin, paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)." 8 U.S.C. § 1225(b)(1), (A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the United States. Thus, subsection (b)(1)'s text demonstrates that it is focused only on people arriving at a port of entry or who have recently entered the United States and not those already residing here.

Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," *i.e.*, those noncitizens who are "seeking admission," but who (b)(1) does not

address. *Id.* § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Petitioner, who have already entered and are now residing in the United States.

Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner. Indeed, court after court has rejected ICE and EOIR's new interpretation and found in favor of individuals in Petitioner's same position. *See supra* at 5–6 (collecting cases).

This includes courts in the District of Colorado. In *Garcia Abanil*, the court joined the chorus of others and found that detention without a bond hearing under § 1225(b)(2) violated the INA and the petitioner's right to due process under the Fifth Amendment to the U.S. Constitution. 2026 LX at 7440 at *16, 19; *see also Loa Caballero v. Baltazar*, 2025 LX 208290, at *6 (D. Colo. Oct. 22, 2025).

In another Colorado case, *Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 LX 229826 (D. Colo. Nov. 21, 2025), conditionally certified a class action of individuals detained under § 1225(b)(2)(A) pursuant to the BIA's decision in *Matter of Yajure Hurtado*. Other district courts across the country effectively have certified the same nationwide class. *See Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM, 2025 LX 231977, *26-27 (C.D. Cal. Nov. 25, 2025) (certifying a nationwide class and extended declaratory judgment to the certified class); *see also Bautista v. Santacruz*, 2025 LX 262265, at *85–88 (C.D. Cal. Dec. 18, 2025) (final judgment; class-wide declaratory relief and APA vacatur of DHS's July 8, 2025 policy); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 LX 214095, (D. Mass. Oct. 30, 2025) (certifying substantially same class for statutory claim regarding bond eligibility). While the class actions

are on appeal, these decisions reflect the growing momentum for the judiciary to address and correct Respondents' mandatory detention policy that unlawfully expands § 1225(b)(2)(A) in violation of § 1226(a).

For these reasons, the Court should find that Petitioner has demonstrated a likelihood of success on the merits.

B. Petitioner Will Suffer Irreparable Harm Absent An Injunction.

Petitioner seeks a temporary restraining order to (i) enjoin Respondents from transporting Petitioner to another jurisdiction until this Court resolves his Petition and (ii) require respondents to release Petitioner immediately or, alternatively, schedule a bond hearing under 8 U.S.C. § 1226(a) within seven (7) days. Without this relief, Petitioner will suffer irreparable harm.

1. Additional Transport Would Compound Petitioner's Irreparable Harm.

Petitioner already suffered irreparable harm when ICE moved him from Wyoming to Colorado. Petitioner's home and his U.S. citizen wife and his two U.S. citizen children are in Wyoming. Relocating Petitioner to Colorado has removed Petitioner from his family. Such separation from family members is a hallmark of irreparable harm. *See Gutierrez v. Baltasar*, No. 25-cv-2720-RMR, 2025 LX 208448, at *27–29 (D. Colo. Oct. 17, 2025) (finding irreparable harm where unlawful detention without a bond hearing both infringed due process and separated the primary financial provider from his family, causing ongoing burdens); *Castillo v. Andra-Ybarra*, No. 25-1074 JB/JFR, 2025 LX 229342, at *26–27 (D.N.M. Nov. 21, 2025) (holding that detention without a bond hearing, causing separation from family, supports a finding of irreparable harm); *see also, e.g.*, *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) ("separated families" are a "substantial injur[y] and even irreparable harm[]"). Additional

transportation would also cut off the support he receives from his family who, at present, know where he is and how to reach him.

Moving Petitioner from Wyoming to Colorado has also forced Petitioner to find counsel in Colorado. Moving Petitioner out of state again (unless back to Wyoming) would result in more irreparable harm as it would impede his access to counsel, who would be faced with the arduous task of locating Petitioner as Respondents move him about as they desire. His relocation would also make it more difficult and costly to maintain representation by his chosen attorneys, both in the context of a habeas claim and his removal proceedings. Studies on representation in removal proceedings show that representation by an attorney dramatically improves case outcomes, but also that it is particularly difficult to secure representation if a person is detained. *See* Ingrid Eagly & Steven Shafter, A National Study of Access to Counsel in Immigration Court, 164 U. Penn. L. Rev. 1, 32, 48–51 (2015).

2. Continued Detention Will Compound Petitioner's Irreparable Harm.

Because Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A) without the right to a bond hearing, he is suffering irreparable harm because his liberty interests are violated. Or, more to the point: "every minute that [Petitioner] is unlawfully denied freedom results in an injury that really can never be remedied." *Ortiz*, 2025 LX 217654, at *11. As alleged in the Petition, and as recognized by courts in this District, when someone "is statutorily entitled under § 1226 to more process than he has thus far received, his continued detention without an individualized bond hearing necessarily violates his Fifth Amendment right to due process." *Garcia Abanil*, 2026 LX 7440 at *1; *see also Zadvydas*, 533 U.S. at 690 ("Freedom 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."). This constitutional violation is grounds for this Court to find that Petitioner has demonstrated irreparable harm. In other words, because Petitioner has demonstrated a strong likelihood of success on his statutory and constitutional claims that his detention is unlawful, he has also demonstrated irreparable harm. *See Free the Nipple–Fort Collins v. City of Fort Collins*, 916 F.3d 792, 805 (10th Cir. 2019) (affirming that likelihood of success on "infringement of a constitutional right . . . require[s] no further showing of irreparable injury").

For these reasons, the Court should find that the Petitioner has demonstrated irreparable harm.

C. The Balance of Hardships and Public Interest Weigh in Favor of Granting Petitioner's Requested Relief.

The final two factors for a temporary restraining order—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, they weigh in Petitioner's favor.

He faces weighty hardships: loss of liberty, removal from his home, separation from family, and the resulting significant stress and anxiety. Respondents, by contrast, face no hardship in preserving the status quo, apart from any costs associated with not being able to move Petitioner's place of his detention (if any). "[T]he balance of hardships tips decidedly in plaintiffs' favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering." *Hatten-Gonzales v. Earnest*, No. 88-0385 KG/CG, 2016 LX 187145, at *29–30 (D.N.M. Mar. 18, 2016) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

In the type of habeas case at issue here, courts have concluded that "there is little question that the balance of the equities and the public interest favor[] granting a [temporary

restraining order] to ensure that [a petitioner] gets the process he is due under section 1226(a)." *Ortiz*, 2025 LX 217654 at *24. This process is a detention hearing, where an immigration judge will decide whether he is a danger or a flight. At that point, "if he is not a danger or a flight risk, then it is in no one's interest to detain him." *Id.* For this reason, there will be no true burden on the Respondents in allowing the § 1226(a) process to occur.

The Court should find that the final factors for injunctive relief weigh in Petitioner's favor and in favor of granting his requested relief.

II. Prudential Exhaustion Is Not Required Because the BIA's Precedential Decision in *Matter of Yajure-Hurtado* Makes Administrative Exhaustion Futile.

Respondents cannot rely on the exhaustion of administrative remedies doctrine to defeat the Petition. For habeas claims, exhaustion is prudential, rather than jurisdictional. *Casillas v. Sessions*, 2017 LX 113377, at *19–28 (D. Colo. July 20, 2017) (explaining that exhaustion in immigration habeas is not jurisdictional in the Tenth Circuit but a prudential doctrine). And exhaustion is not required when such exhaustion would be futile, such as is the case where the agency has predetermined the issue at hand. *McCarthy v. Madigan*, 503 U.S. 140, 147–148 (1992).

Here, the BIA has directly and unequivocally reached the issue of whether Petitioner could obtain relief from detention, having improperly determined that aliens who have entered the United States without inspection are categorically subject to mandatory detention. *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Any immigration court in which Petitioner filed a motion to redetermine bond eligibility would be bound to follow the precedent set by the BIA, who having decided the issue this year, would have no interest in suddenly reversing their

interpretation of the law on appeal. Thus, any attempt by Petition to exhaust administrative remedies would be futile.

Accordingly, this Court should join the many others that have concluded that the prudential exhaustion requirements [are] waived for futility. *Ortiz*, 2025 LX 217654 at *11; *Casillas*, 2017 LX 113377, at *22 (D. Colo. July 20, 2017) (recognizing that prudential exhaustion in immigration habeas is not required when futile).[5]

CONCLUSION

Because the Petitioner is likely to succeed on the merits, will suffer irreparable harm absent an injunction, and as the Respondents will not be burdened by preserving the status quo, the Court should issue an order prohibiting Respondents from relocating the Petitioner out of the Court's jurisdiction and requiring Respondents to immediately release Petitioner from custody (or, in the alternative, grant him a bond hearing under 8 U.S.C. § 1226(a) within seven (7) days).

[5] Additionally, as the issue is whether Petitioner's current mandatory detention is legal, the time spent proceeding through such administrative avenues would irreparably injure him due to his ongoing incarceration.

Respectfully submitted this 2nd day of February, 2026.

s/*Samantha Wolfe*
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CERTIFICATE OF SERVICE

I hereby certify that on 2/2/2026, I have caused to be electronically filed the foregoing with the Clerk of Court using CM/ECF system which will send notification of such filing to all counsel of record.

s/ Samantha D. Wolfe
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