

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.:

MOUSSA KOMARA, an individual,

Petitioner,

v.

PAMELA J. BONDI, Attorney General,
KRISTI L.A. NOEM, Secretary, U.S. Department of Homeland Security,
TODD M. LYONS, Acting Director of Immigration and Customs Enforcement,
Immigration and Customs Enforcement,
DAREN K. MARGOLIN, Director for Executive Office for Immigration Review,
Executive Office for Immigration Review,
ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and Customs
Enforcement,
and,
JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado,

Respondents.

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner Moussa Komara (hereinafter “Mr. Komara”) has been detained by Immigration and Customs Enforcement (“ICE”) and denied the right to release on bond. Mr. Komara requests a Temporary Restraining Order (“TRO”) for his immediate release from custody or, in the alternative, provide 72-hours’ notice prior to any removal or movement.

Mr. Komara’s continued detention without the opportunity to be heard in a bond hearing is inconsistent with the INA. Respondents have repeatedly indicated that individuals similarly situated to Mr. Komara were detained under 8 U.S.C. § 1226, and the plain text, legislative history,

and longstanding administrative practice reinforce the conclusion that Respondents cannot detain him under 8 U.S.C. § 1225(b)(2)(A) now, more than two years after he arrived in the United States.

Mr. Komara is very likely to prevail on the merits of his case because his detention, absent the ability to post bond, is a quintessential irreparable harm. Respondents conversely have no interest in unlawfully detaining Petitioner. The Court should grant this motion.

FACTS

Mr. Komara is a native and citizen of Guinea who entered the U.S. on February 5, 2024. Pet. for Writ of Habeas Corpus at ¶ 33. Mr. Komara speaks Mandingo-Koniaka and virtually no English. *Id.* at ¶ 36. After he entered the U.S., Mr. Komara surrendered to Border Patrol, who detained him for about two days. *Id.* at ¶ 33. He timely filed an I-589 Application. *Id.* at ¶ 35. Mr. Komara abided by all Notices to Appear at immigration court hearings, yet the immigration court has been unable to provide him with a Mandingo-Koniaka interpreter that would allow him to participate in the judicial process. *Id.* at ¶ 36. After his May 28, 2025 Notice to Appear hearing at Fort Snelling, Minnesota, Mr. Komara faced a surprise ICE motion to dismiss (apparently as part of a nationwide scheme) and was arrested. *Id.* at ¶ 37. He has since been detained by ICE in Minnesota, Iowa, Louisiana, and finally Colorado, where he is currently. *Id.* at ¶ 38.

On October 15, 2025, the Board of Immigration Appeals dismissed Mr. Komara's appeal of DHS's removal action on the basis that DHS "was not seeking to remove" him. *See Id.* at Ex. A. On October 24, 2025, DHS filed a second removal action alongside an I-200 administrative arrest warrant dated May 28, 2025, which indicates Mr. Komara is being detained "pursuant to section[] 236 . . . of the Immigration and Nationality Act [8 U.S.C. § 1226]." *See Id.* at Ex. B. Despite its I-200 warrant indicating the reason for his detention, Respondents now maintain Mr. Komara is subject to detention under 8 U.S.C. § 1225(b)(2). *Id.* at ¶ 46.

ARGUMENT

I. THE COURT HAS JURISDICTION.

“Challenges to immigration detention are properly brought directly through habeas.” *Abanil v. Baltazar*, No. 25-cv-4029, 2026 WL 100587, at *3 (D. Colo. Jan. 14, 2026) (quoting *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004)).

II. EXHAUSTION IS FUTILE WHEN RESPONDENTS COLLABORATE IN DEVELOPING A NATIONWIDE CHANGE OF POLICY

The Supreme Court has noted that prudential exhaustion is not required when doing so would be futile or “the administrative body . . . has . . . predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). Here, the Board of Immigration Appeals (BIA) – i.e. the Department of Justice – decided *Matter of Yajure Hurtado*, in which the Department held that 8 U.S.C. § 1225(b)(2)(A) governs custody of aliens like Mr. Komara. 29 I. & N. Dec. 2016 (BIA 2025). Because *Hurtado* binds the underlying administrative proceedings, 8 C.F.R. § 1003.1(g)(1), those proceedings are rendered entirely futile. Any argument for exhaustion would be predicated on giving the Board first crack, but the Board has spoken.

Furthermore, “[t]here is no useful purpose to proceeding through the administrative remedy process where the petitioner presents a pure question of law.” *Vang v. Eischen*, No. 23-CV-721 (JRT/DLM), 2023 WL 5417764, at *3 (D. Minn. Aug. 1, 2023). “A party also may escape the exhaustion requirement if it is able to show that the agency clearly exceeded its statutory authority.” *Trinity Indus., Inc. v. Reich*, 901 F. Supp. 282, 286 (E.D. Ark. 1993) (citing *Philip Morris, Inc. v. Block*, 755 F.2d 368, 370 (4th Cir. 1985)). This issue is a matter of law related to

agency conduct in excess of the statute. Exhaustion is not required; similarly situated courts have agreed.¹

III. A TEMPORARY RESTRAINING ORDER IS APPROPRIATE.

A party seeking a TRO must establish the following elements: (1) likely success on the merits; (2) likely irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in the plaintiff's favor; and (4) an injunction is in the public interest. *Abay v. City of Denver*, 445 F. Supp. 3d 1286, 1291 (D. Colo. 2020). These factors all militate towards a TRO.

A. Likelihood of Irreparable Harm

Plaintiffs seeking preliminary relief must show irreparable injury is likely, in the absence of an injunction. *See Winter v. Nat. Res. Def. Council, Inc.*, 129 S. Ct. 365, 367 (2008). This Court, along with other federal courts, “have long recognized that infringement of a constitution right is an irreparable injury.” *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 942 (D. Colo. 2025). Indeed, “[f]reedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001). Mr. Komara has been detained without a bond since May 28, 2025, despite clear eligibility for a statutorily mandated bond hearing under 8 U.S.C. § 1226(a)(2)(A). Additionally, forcing a petitioner to “litigate his case many states away from his lawyers would meaningfully deprive [him] of counsel’s ability to aid in his

¹ *See Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Ermeo Sicha v. Bernal*, 2025 WL 2494530 (D. Me. Aug. 29, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025).

representation . . .”, further adding to Mr. Komara’s injury and continued restriction to the legal system. *Arostegui-Maldonado*, 794 F. Supp. 3d 926 at 949 (internal quotes omitted).

Petitioner is eligible, under the applicable statute 8 U.S.C. § 1226(a)(2)(A), for bond. Every day he remains in detention is a violation of this statute that deprives him of his freedom and, therefore, is proof of worsening direct harm to Petitioner. *See Arostegui-Maldonado*, 794 F. Supp. 3d 926 at 942 (prolonged detention without constitutionally adequate bond hearing proved a continuing violation of procedural due process rights). Immediate relief in the form of a TRO is warranted to halt ongoing harm and restore his rights while his habeas proceedings are pending. Additionally, Mr. Komara will be harmed if Respondents are allowed to transfer him without advance notice to his attorneys. Moving him without notice will impede, if not completely prevent, Mr. Komara’s ability to speak with counsel at a time when meaningful, frequent access to counsel is imperative. Not only is this a fast-evolving matter, but the issues of immigration enforcement on the national level are changing with each passing day. Mr. Komara’s access to the American justice system has already been effectively denied by the immigration court’s failure to provide a translator, meaning any further barriers to justice should be avoided at every turn. There is no reason to believe that, if Mr. Komara is transferred, he will not incur the same obstacles to being provided a translator in another facility. Finally, transferring Mr. Komara also complicates the need for any appearance in this Court. Given the time-sensitive nature of continued unlawful detention, this too is irreparable harm.

B. Likelihood of Success on Merits

The likelihood of success on the merits and irreparable harm factors are the most important considerations in deciding whether to grant a TRO. *Mendoza Gutierrez v. Baltasar*, 2025 WL 2962908 (D. Colo. Oct. 17, 2025). When a party seeks a “disfavored” injunction, as is the case

here, this Court requires a “strong showing” of likelihood of success on the merits, which is analyzed using the six *Singh* factors. *See, e.g., Arostegui-Maldonado*, 794 F. Supp. 3d 926 at 938. *Singh* requires consideration as to (i) length of detention, (ii) likely duration of future detention, (iii) conditions of detention, (iv) delays caused by petitioner, (v) delays caused by the government, and (vi) likelihood of removal. *See id.* Not all factors need to weigh in favor of the petitioner for the court to agree they have satisfied the heightened standard for proving likelihood of success on the merits. *Id.* at 942.

The first factor weighs in petitioner’s favor where detention exceeds six months, and in fact becomes less reasonable the longer it continues. *Id.* at 939. Such is the case here, where Mr. Komara has been detained for nearly a year. The second factor considers whether, absent judicial relief, detention will continue for an indefinite period, including appeals. *Id.* Such is the case here, as Mr. Komara has yet to even argue the merits of his case, which is arguably the beginning of a long process of possible appeals. The third factor, conditions of detention, considers whether conditions are “meaningfully different from a penal institution for penal confinement.” *Id.* at 940. While the conditions of the Aurora Detention Facility have not been proven in this case, it’s notable that *Arostegui-Maldonado*, decided mere months ago on August 8, 2025, found the Aurora Detention Facility was in such a state that this factor clearly weighed in favor of the petitioner.² There is little reason to think the situation at this very facility has vastly improved from August of last year until now, and therefore this factor weighs in Mr. Komara’s favor. The fourth factor, delays caused by petitioner, considers whether the petitioner voluntarily initiated proceedings to continue his detention. *Id.* DHS has made no claim that Mr. Komara has caused delays, and there

² The Aurora Detention Facility was like a penal detention facility because detainees were only able to visit family behind glass and by telephone, 80 people lived in a 750-sqft space, and limited access to medical care, among other reasons. *Arostegui-Maldonado*, 794 F. Supp. 3d 926 at 940.

certainly have been none which he is responsible for. The fifth factor, delays by the government, considers whether “unnecessary delay attributable to an IJ is the sort of careless or bad-faith mishap” which weighs in favor of the petitioner. *Id.* (internal cites omitted). Here, the government’s repeated failure to provide a translator is certainly cause for delay which weighs in favor of Mr. Komara. Finally, likelihood of removal requires consideration of “the likelihood that the removal proceedings will result in a final order of removal.” *Singh v. Choate*, 2019 WL 3943960, *5 (D. Colo. Aug. 21, 2019). In *Arostegui-Maldonado* a final removal order was not enough to weigh in favor of the government, as there was a dissent in the BIA appeal that led the court to infer the BIA at least found some merit in the claim for relief. *Id.* This dissent alone led this factor to weigh in petitioner’s favor. Resultingly, there certainly can be no allegation that Mr. Komara is likely to be removed, as the immigration court has not even been able to hear the merits of his case. Taking these factors into account, and showing that Mr. Komara has satisfied each, he has shown a likelihood of success on the merits.

Even beyond satisfying the *Singh* factors, Mr. Komara, like others who have filed for similar relief before this Court, can show likelihood of success on the merits by the language of 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b)(2)(A) alone. *See, e.g., Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at *6 (D.N.M. Sept. 17, 2025) (petitioners who entered the country without inspection in the 1980s were subject to § 1226, rather than § 1225, and denial of meaningful bond review violated due process). Where § 1226(a) says an alien “*may* be arrested and detained pending decision” and therefore “indicates Congress’s intent to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant,” § 1225(b)(2)(A) only applies to noncitizens “seeking admission,” and not those who had lived in the U.S. for years. *Mendoza Gutierrez*, 2025 WL 2962908, at *7. This Court, like others listed

below, has found that “when the Court reads the statutes side by side, the Court is further convinced that § 1225 was intended for noncitizens inspected upon entry to the United States or who have lived in the United States for less than two years, and § 1226(a) is intended for the apprehension and detention of aliens ‘already in the country.’” *Mendoza Gutierrez*, 2025 WL 2962908, at *7.

Other courts have already issued favorable ruling on materially similar facts.³ The only case Mr. Komara is aware of that held otherwise entirely failed to account for or wrestle with the

³ See *Cf. Belsai v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *A.A. v. Olson*, 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Herrera Avila v. Bondi*, 25-cv-03741 (D. Minn. Oct. 21, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Arce v. Trump*, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Hernandez Marcelo v. Trump*, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Chogllo Chafila v. Scott*, 2025 WL 2688541 (D. Me. Sept. 22, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Chang Barrios v. Shepley*, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Chiliquinga Yumbillo v. Stamper*, 2025 WL 2783642 (D. Me. Sept. 30, 2025); *Chanaguano Caiza v. Scott*, 2025 WL 2806416 (D. Me. Oct. 2, 2025); *Ayala Casun v. Hyde*, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Padron Covarubias, v. Vergara*, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *S.D.B.B. v. Johnson*, WL 2845170 (M.D.N.C. Oct. 7, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Sanchez Ballestros v. Noem*, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Mejia v. Woosley*, 2025 WL 2933852 (W.D. Ky. Oct. 15, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D.

plain language of 8 U.S.C. § 1225(b)(2)(A), requiring an applicant for admission to also be “seeking admission” at the time of the detention, but rather requested release based on a mistaken understanding of what a visa is. *See Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025). *Pena* is not instructive.

As such, Petitioner is also likely to succeed on the merits of his claim that 8 U.S.C. § 1225(b)(2)(A) does not apply to him.

a. The Plain Text Illustrates that 8 U.S.C. § 1225(b)(2)(A) Cannot Apply as Petitioner Was Not “Seeking Admission” When He Was Detained in May 2025.

8 U.S.C. § 1225(b)(2)’s text and structure illustrate it is inapplicable now, years after Mr. Komara first arrived and entered the U.S. As the Supreme Court has held, while “Section 1225(b) ‘authorizes the Government to detain certain aliens *seeking admission into the country*,’ Section 1226 ‘authorizes the Government to detain certain aliens *already in the country* pending the

Mich. Aug. 29, 2025); *Contreras-Cervantes, v. Raycraft*, 2025 WL 2952796 (E.D. Mich. Oct. 17, 2025); *Morales Chavez v. Director of Detroit Field Office*, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *Sanchez Alvarez v. Noem*, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *B.D.V.S. v. Forestal*, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Ochoa Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Lepe v. Andrews*, No. 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Jabara Oliveros v. Kaiser*, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); *Castellanos v. Kaiser*, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); *Leon Espinoza v. Kaiser*, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Cordero Pelico v. Kaiser*, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Ortiz Donis v. Chestnut*, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); *Sabi Polo v. Chestnut*, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025); *Cerritos Echevarria v. Bondi*, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cardin Alvarez v. Rivas*, 2025 WL 2898389 (D. Ariz. Oct. 7, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Mendoza Guitierrez*, 2025 WL 2962908; *Aguilar Merino v. Ripa*, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025).

outcome of removal proceedings.” *Gomes*, 2025 WL 1869299, at *2 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)).

“[W]e start where we always do: with the text of the statute.” *Van Buren v. United States*, 593 U.S. 374 (2021). In interpreting 8 U.S.C. § 1225(b)(2), it is critical to note how the qualifier “seeking admission” limits the class of aliens to those seeking entry into the U.S. from outside the country, either at the border or a port of entry. In this way, an “alien present in the United States who has not been admitted” is only subject to 8 U.S.C. § 1225(b)(2) if “seeking admission.”

As the Supreme Court has held:

It is important to note at the outset that our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission ... and those who are within the United States after an entry, irrespective of its legality. In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely “on the threshold of initial entry.”

Leng May Ma v. Barber, 357 U.S. 185, 187 (1958) (citing *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 212 (1953)) (emphasis added). Mr. Komara was plainly beyond the threshold of entry when detained.

This is particularly notable given that the term “admission” is statutorily defined as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13). As always, “we start ... with the text of the statute,” *Van Buren*, 593 U.S. 374, so to be “seeking admission,” a person must be seeking “lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13). This is augmented by long-held interpretations of “[t]he word ‘entry’ [which] by its own force implies a coming from outside.” *U.S. ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929).

Mr. Komara is not outside the U.S., nor did his apprehension occur at the threshold of the U.S., nor has he been outside the country for years. He is not seeking admission at this time, nor was he at the time of his 2025 detention. As such, 8 U.S.C. § 1225(b)(2) cannot apply to him.

The remainder of the INA's definition of "admission" reinforces the conclusion that "admission" contemplates entry from outside. The provisions related to when a lawful permanent resident ("LPR") will be treated as "seeking an admission" bear this out.

An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission ... unless the alien-

- (i) has abandoned or relinquished that status,
- (ii) has been absent from the United States for a continuous period in excess of 180 days,
- (iii) has engaged in illegal activity after having departed the United States,
- (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,
- (v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or
- (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

8 U.S.C. § 1101(a)(13)(C). To be "seeking admission" as contemplated under 8 U.S.C. § 1225(b)(2), an alien must be entering from abroad. The provision clearly applies at and immediately around the border.

By contrast, aliens like Petitioner are not "seeking admission" when they are detained by ICE. While they may be "applicants for admission" under 8 U.S.C. § 1225(a)(1), to "seek

admission” they would need to present at a border or port of entry and request “admission into the United States.” 8 U.S.C. § 1181.

This is also consistent with how all Circuits have “construe[d] the meaning of the phrase ‘at the time of application for admission’” in the context of 8 U.S.C. § 1182(a)(7), which “refers to the particular point in time when a noncitizen submits an application to physically enter into the United States.” *Torres v. Barr*, 976 F.3d 918, 924 (9th Cir. 2020); *see also Marques v. Lynch*, 834 F.3d 549, 561 (5th Cir. 2016) (quoting *Ortiz-Bouchet v. U.S. Atty. Gen.*, 714 F.3d 1353, 1356 (11th Cir. 2013)) (“Section 1182(a)(7) ‘only applies to applicants for admission and not to immigrants ... who sought post-entry adjustment of status while already in the United States.’”). Just as an “application for admission” occurs at the specific moment an application is applied for, seeking admission also occurs at the moment admission is sought.

Mr. Komara was detained over a year after entering the U.S., hundreds of miles from any border or port of entry. At the time of Mr. Komara’s arrest, he was, and still is not, seeking admission. Therefore, 8 U.S.C. § 1225(b)(2)(A) cannot apply.⁴

b. Canons Against Surplusage Require Finding that Mr. Komara Is Not Subject to 8 U.S.C. § 1225(b)(2).

As a rule, courts do not “adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.” *Sudan v. Harrison*, 139 S. Ct. 1048, 1058 (2019). In fact, this “canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.” *Chicago v. Fulton*, 141 S. Ct. 585, 591 (2021) (quoting *Yates v. United States*, 574 U.S. 528, 543 (2015)).

⁴ *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) is owed no deference under *Loper Bright*, 603 U.S. at 369, and simply regurgitates the same tired arguments that have been rejected by at least 20 district courts throughout the country.

Interpreting 8 U.S.C. § 1225(b)(2) as Respondents do would have the Court render the entire Laken Riley Act (LRA) superfluous. In the LRA, Congress added language to 8 U.S.C. § 1226(c) that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, an alien who “is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a) of this title; and is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person” is subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(E).

If everyone inadmissible under 8 U.S.C. § 1182(a)(6)(A) is already subject to mandatory detention under 8 U.S.C. § 1225(b)(2), then there would be no need for the LRA at all, as those present without admission who commit crimes would not require a separate provision to mandate detention. That would render an entire provision of the INA surplusage and runs afoul of the maxim that “[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.” *Pierce Cnty. v. Guillen*, 537 U.S. 129, 145 (2003).

c. The government’s own documents rely on 8 U.S.C. § 1226.

Further, where the government’s own immigration documents regarding Mr. Komara rely on § 1226(a), such documents weaken a later change of direction where the government seeks to apply § 1225(b)(2)(A) to seek mandatory detention. *See Mendoza Gutierrez*, 2025 WL 2962908, at *7 (government’s argument that § 1225(b)(2)(A) applies is weakened because petitioner was arrested pursuant to I-200 arrest warrant, which relies on § 1226(a)).

Mr. Komara was apprehended the government dismissed his first removal proceedings, more than a year after he first arrived in the U.S. He was, therefore, not “seeking admission”, but

had been present and had previously participated in another NTA hearing before being served with an I-200 arrest warrant. As this Court has recognized, “Courts have given great weight to the manner in which DHS treated the petitioner in determining which detention statute applies.” *Mendoza Gutierrez*, 2025 WL 2962908, at *8 (citing *Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025)). This I-200 administrative arrest warrant further indicates Mr. Komara is being detained “pursuant to section[] 236 . . . of the Immigration and Nationality Act.” See Pet. for Writ of Habeas Corpus, at Ex. C. Documents like these have been instructive to this Court in its decision that § 1226(a) applied to a noncitizen, because they show that even DHS relied on § 1226(a). Accordingly, Mr. Komara was not “seeking admission into the country,” as these early immigration documents readily acknowledge.

d. Applicable Precedent Cuts in Petitioner’s Favor.

To the extent that the Court is ruling on the *likelihood* of success on the merits, the existence of at least thirty decisions affirming Mr. Komara’s interpretation of the law, in contrast to just one incomplete and poorly pled decision in Respondents’ favor, certainly suggests he has illustrated a strong likelihood of success. Courts in Minnesota, Massachusetts, Louisiana, New York, California, New York, and Arizona have endorsed Petitioner’s petition on similar facts. *Supra* § III.B.

C. Relevant Hardships and Public Interest

“Where a plaintiff satisfies the threshold requirement for a preliminary injunction, courts weigh ‘the irreparable harm the moving party will endure if the preliminary injunction is wrongfully denied versus the irreparable harm to the nonmoving party if it is wrongfully granted.’” *Isserdasani v. Noem*, No. 25-CV-283-WMC, 2025 WL 1118626, at *5 (W.D. Wis. Apr. 15, 2025) (quoting *K.C. v. Individual Members of the Medical Licensing Bd. of Indiana*, 121 F.4th 604, 632 (7th Cir. 2024)). The balance of the equities and the public interest factors merge when the federal

government is the opposing party. *See Mendoza Gutierrez*, 2025 WL 2962908, at *9 (D. Colo. Oct. 17, 2025).

Courts have recognized that the public interest includes upholding constitutional safeguards, ensuring due process, and preventing unnecessary deprivation of liberty. *See, e.g., Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013); *Mohammed H. v. Trump*, 2025 WL 1692739, at *6 (D. Minn. June 17, 2025) (rejecting public-interest argument where detention rested solely on automatic stay without evidence); *Günaydin*, 2025 WL 1459154, at *10 (same). Accordingly, the government does not “enjoy an unfettered right to detain noncitizens in contravention of the law or in violation of the noncitizens’ Fifth Amendment rights.” *Mendoza Gutierrez*, 2025 WL 2962908, at *10. The public interest is not served by needlessly incarcerating a man with no criminal conviction in violation of statute. Also, “[e]nsuring compliance with a pre-existing requirement imposed by the Supreme Court and Constitution, without limiting any powers under an entirely different statutory regime that permits deportations and removals, does not rise to a level of “harm” that outbalances the harm Petitioners face absent the issuance of a TRO in this case at this stage.” *D.B.U. v. Trump*, 779 F. Supp. 3d 1264, 1284 (D. Colo. 2025).

Granting Mr. Komara’s TRO is fully consistent with the government’s ability to enforce its immigration laws. If the TRO is granted, DHS retains the ability to continue his removal case, monitor his compliance with conditions of release, and seek re-detention if circumstances change. In short, the government can enforce the law and the Court can ensure that enforcement proceeds within constitutional bounds by ordering the Respondents schedule and hold a bond hearing within five business days.

The harms to Mr. Komara have been articulated, *supra*, and they are severe. In contrast,

“[t]here is generally no public interest in the perpetuation of unlawful agency action.” *Missouri v. Trump*, 128 F.4th 979, 997 (8th Cir. 2025). The Eighth Circuit has called the federal interest in an action is “minimal” where the plaintiff has illustrated a “strong likelihood of success in showing it exceeds agency authority.” *Id.* As that is the case here, all factors favor the issuance of a TRO.

CONCLUSION

The evidence compels the conclusion that Mr. Komara, who has demonstrated a strong likelihood of success on the merits of his habeas petition, will suffer significantly and irreparably in the absence of a TRO. As such, a TRO must be granted to release Mr. Komara from detention, or, at the very least, provide 72-hours’ notice before any transfer.

Respectfully submitted,

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