

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

Civil Action No. 1:26-cv-00610

IRFAN HOTAK,

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

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

Petitioner-Plaintiff Irfan Hotak (“Mr. Hotak”) moves for a temporary restraining order against Respondents-Defendants (“Respondents”) pursuant to Rule 65 and the All Writs Act. Mr. Hotak is a civil immigration detainee at the Immigration and Customs Enforcement (ICE) Denver Contract Detention Facility in Aurora, Colorado (“Aurora Facility”). Respondents reincarcerated Mr. Hotak and now deny him release on bond under their erroneous interpretation of the Immigration and Nationality Act (“INA”). The Court should order Mr. Hotak’s release (or that Respondents provide a custody hearing within 7 days). The Court should further enjoin Respondents from transferring Mr. Hotak 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 Respondents detained for removal proceedings were bond eligible. Respondents’ radical change in course violates the statute. 8 U.S.C. § 1226 provides noncitizens “arrested and detained” during removal proceedings “may [be] release[d] on a bond ...” absent certain criminal charges. 8 U.S.C. § 1226(a)(2), (c). The Supreme Court explained § 1226 is the “default” detention provision, authorizing the incarceration of people “already in the country,” distinguishing them from “[noncitizens] seeking admission into the country” who “shall” be detained under § 1225. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Respondents now erroneously insist that 8 U.S.C. § 1225 governs Mr. Hotak’s detention.

Under Respondents’ theory, Mr. Hotak is now “seeking admission” to the U.S. and subject to mandatory detention under § 1225(b)(2) despite concluding otherwise when they first encountered him and released him pursuant to conditional parole under § 1226 in 2023.¹ Applying

¹ Exh. 1 – Order of Release on Recognizance

mandatory detention pursuant to § 1225(b)(2) under these circumstances is wrong. Federal courts in hundreds of cases have overwhelmingly held that Respondents’ expansive interpretation of § 1225(b)(2) is illegal.² The “tsunami” of federal courts ruling that people incarcerated within the United States years after their arrival are not subject to § 1225(b)(2), *Roa*, 2025 WL 2732923, at

² *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).

*1 (citation omitted), includes the Western District of Washington's grant of summary judgement to a class of incarcerated noncitizens presenting arguments similar to those Mr. Hotak does here. *Rodriguez Vazquez v. Bostock*, 802 F.Supp.3d. 1297 (W.D. Wash. Sept. 30, 2025). It also includes a preliminary decision by the Seventh Circuit Court of Appeals ruling that Respondents' new interpretation of § 1226(a) and § 1225(b)(2) is wrong. *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1062 (7th Cir. 2025); *But see, Buenrostro-Mendez v. Bondi*, ---F.4th---, 2026 WL 323330, at *5–10 (5th Cir. 2026) (finding Respondents' statutory interpretation correct). Indeed, the issues here are not new. Judges in this District have unanimously found that Respondents' 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 (attached as Exh. 2).³

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).

³ *E.g., Mendoza Gutierrez v. Baltazar et al.*, 1:25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Moya Pineda v. Baltazar 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. Baltazar 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. Baltazar et al.*, 1:25-cv-03961-GPG (D. Colo. Dec. 30, 2025).

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).

These two provisions reflect immigration law’s distinction between noncitizens arrested after entering the country (§ 1226) and those arrested while arriving at our nation’s border (§ 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. Respondents’ New Illegal Mandatory Detention Policy

Since IIRIRA’s passage, Respondents applied § 1226(a) to people arrested in the interior after entry without inspection. Respondents switched course and insist that § 1225(b)(2)(A)

requires detention of all persons who entered the U.S. without inspection, regardless of where they were arrested or how long they have resided in the country. The change began at the Tacoma Immigration Court where IJs began denying bond to those who entered without inspection. *See Rodriguez-Vazquez*, 779 F. Supp. at 1244. Then, on May 22, 2025, the 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.⁴ 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 Respondents’ new position, IJs at the Aurora Facility continue to apply Respondents’ 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. Mr. Hotak is Ideally Qualified for Bond

Mr. Hotak is detained solely because of Respondents’ claim that he is subject to § 1225(b)(2)(A).⁵ In 2023, Respondents encountered Mr. Hotak after he entered the United States without inspection and released him pursuant to 8 U.S.C. § 1226.⁶ Respondents also charged him

⁴ Exh. 3, “Interim Guidance Regarding Detention Authority for Applicants for Admission.”

⁵ Exh. 4, “Order of the Immigration Judge,” denying bond and finding Mr. Hotak subject to § 1225(b)(2).

⁶ Exh. 1, “Order of Release on Recognizance.”

as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) for having entered without inspection or parole.⁷ ICE ordered him to report to immigration court in Denver on August 22, 2024.⁸ Mr. Hotak duly complied, only to be told that ICE had not yet filed his NTA with the immigration court.⁹

Nevertheless, Mr. Hotak timely filed his asylum application¹⁰ and has no criminal history that would subject him to mandatory detention. He regularly reported to ICE while at liberty in the United States without issue. On December 18, 2025 ICE reincarcerated Mr. Hotak without notice or an opportunity to be heard during a routine appointment. Mr. Hotak is a devoted brother of a lawful permanent resident, a valued community member, and has no criminal contact that would render him subject to § 1226(c). In sum, Mr. Hotak is an excellent candidate for bond.

II. Legal Standard for Granting Preliminary Relief

Mr. Hotak 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. Mr. Hotak is Likely to Succeed on the Merits

Respondents' policy of indiscriminately jailing people who entered without inspection years ago 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

⁷ Exh. 5, "Notices to Appear" (Mr. Hotak provides both because ICE has yet to file either in immigration court).

⁸ *Id.*

⁹ Exh. 6, "Court Communication"

¹⁰ Exh. 7, "Asylum Biometrics Notice"

U.S. at 297 & 287. In contrast, § 1226 applies to people who, like Mr. Hotak, 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 overwhelmingly 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 Mr. Hotak are entitled to a bond hearing”) (emphasis added); *See supra*, n.1 & n.2. In fact, Respondents’ contrary position “has been rejected in more than 1,500 district court decisions.” *Chavez Amrenta v. Noem*, No. 26-cv-00236-PAB, 2026 WL 274634, at *2 (D. Colo. Feb. 3, 2026).

1. The text of § 1226(a) and canons of statutory construction demonstrate Mr. Hotak 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. § 1226.¹¹ 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

¹¹ 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). Judge Martinez from this District agrees. *Martinez-Orellana v. Hagan*, No. 26-cv-0355-WJM (D. Colo. Feb. 13, 2026) (attached as Exh. 8).

[noncitizen] is to be removed,” 8 U.S.C. § 1226(a). As the statute provides, this language includes both (1) people like Mr. Hotak 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 Mr. Hotak. *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 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). Respondents’ position does just that. As the *Rodriguez Vazquez* court explained, this is so because if “Section 1225 ... and its mandatory detention provisions apply to all noncitizens who have not been admitted, then it would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens.” *Rodriguez Vazquez*, 779 F.Supp.3d at 1258 (citation modified); *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 Mr. Hotak. 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 Mr. Hotak’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 [Mr. Hotak].” *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 Mr. Hotak.

Section § 1225’s structure also supports § 1226(a) applying to Mr. Hotak. “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.

Respondents reading of § 1225 would also render significant portions of § 1225 meaningless. Several requirements must be met for § 1225(b)(2)'s mandatory detention regime to apply; namely, (1) an "examining immigration officer" (2) must conclude during an "inspection" (3) of an "applicant for admission" (4) who is also "seeking admission" (5) that the person "is not clearly and beyond a doubt entitled to be admitted." § 1225(b)(2)(A). Respondents' interpretation of § 1225 reads out three of those five requirements.

First, it makes superfluous the requirements that the "examining immigration officer" conduct an "inspection." *Jimenez*, 2025 WL 2639390 at *7. "[E]xamination is not an unbound concept. Rather, it is the specific legal process one undergoes while trying to enter the country." *Id.* (citations omitted). The regulations make that plain. 8 C.F.R. § 235.1(a) (noting that "scope of examination" occurs while one 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). Respondents' interpretation renders both the examination officer and inspection requirements superfluous.

Second, it renders superfluous §1225(b)(2)(A)'s requirement that the noncitizen be "seeking admission." *Jimenez*, 2025 WL 2639390, at *8. The statute defines admission to mean "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (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. Respondents’ position would similarly “read the word ‘entry’ out of the definitions of ‘admitted’ and ‘admission.’” *Chafla*, 2025 WL 2688541, at *6.

The implementing regulation for § 1225(b) supports Mr. Hotak’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 Mr. Hotak 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. Indeed, Mr. Hotak entered the United States without inspection years ago and ICE determined then that he was neither a risk of flight nor a danger to the community, releasing him on his own recognizance.¹² Respondents’ abrupt change of course based on its erroneous interpretation of the statute is unlawful.

3. The legislative history further supports Mr. Hotak’s argument.

IIRIRA’s legislative history also supports the conclusion that § 1226(a) applies to Mr. Hotak. 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.

¹² Exh. 1

Before the IIRIRA, people like Mr. Hotak 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 [Mr. Hotak] were entitled to discretionary detention under [§] 1226(a)’s predecessor statute and Congress declared its scope unchanged ... this background supports [Mr. Hotak’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. Respondents’ policies violate longstanding EOIR regulations.

Respondents’ 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).

5. Respondents' decision to reincarcerate Mr. Hotak without Process violated the Constitution's Guarantee of Procedural Due Process.

Mr. Hotak is entitled procedural due process. Respondents already determined in 2023 that he is neither a risk of flight nor a danger to the community, releasing him on his own recognizance.¹³ Over two years later, without notice or an opportunity to be heard, Respondents rearrested him while he voluntarily reported to an ICE check-in. That is unlawful.

“It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). The “touchstone” of due process is protecting people against arbitrary government action, whether from “denial of a fundamental procedural fairness, or the exercise of power without any reasonable justification in the service of a legitimate government objection.” *Cty. of Sacramento v. Lewis*, 532 U.S. 833, 845–46 (1998). “Even those who face significant constraints on their liberty or those over whose liberty the government wields significant discretion retain a protected interest in their liberty.” *Rosado v. Figueroa*, CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 at *11 (D. Ariz. Aug. 11, 2025); *Guillermo M.R. v. Kaiser*, 791 F.Supp.3d 1021, 1030 (N.D. Ca. Jul. 17, 2025) (citations omitted) (same).

“Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 333 (citation modified).

Whether government action violates procedural due process is determined by the three-factor balancing test in *Mathews*. *Id.* at 335. The test requires the Court to balance (1) “the private

¹³ Exh. 1.

interest that will be affected by the official action”; (2) “the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* A proper application of the test demonstrates ICE’s unlawfulness and the need for this Court to order Mr. Hotak’s immediate release.

First, the private liberty interest at stake is the most significant liberty interest there is, the interest in being free from imprisonment. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Incarceration “constitutes a significant deprivation of liberty that requires due process protection” no matter the purpose. *Jones v. United States*, 463 U.S. 354, 361 (1983). “Although ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody they have a protected liberty interest in remaining out of custody.” *Rosado*, 2025 WL 2337099, at *12 (collecting cases). “When assessing this factor, courts consider the conditions under which detainees are currently held, including whether a detainee is held in conditions indistinguishable from criminal incarceration.” *Rosado*, 2025 WL 2337099, at *13. Courts in this district have repeatedly found that the Aurora Facility “strongly resemble[s] penal confinement” and that the conditions there “are abhorrent.” *Arostegui-Maldonado v. Baltazar*, 794 F.Supp.3d 926, 940 (D. Colo. 2025). This factor strongly weighs in Mr. Hotak’s favor, especially when—as here—Respondents’ decision to jail Mr. Hotak is pursuant to the wrong statute. *Mendoza Gutierrez*, 2025 WL 2962908, at *9.

Second, the risk of erroneous deprivation is significant because ICE's decision to re-jail Mr. Hotak lacked any procedures at all and ICE has not provided him with any process since. *Lopez v. Sessions*, 18 Civ. 4189 (RWS), 2018 WL 2932726, at *11 (S.D.N.Y. Jun. 12, 2018) (finding that "re-detention, in the absence of any procedure or evidentiary findings, establishes the risk of erroneous deprivation of a liberty interest"); *See Mathews*, 424 U.S. at 335. That is particularly true where—as here—ICE reincarcerates a noncitizen that it originally released because while "ICE has the authority to re-arrest a noncitizen and revoke their release pending the outcome of removal proceedings[,] it may "only" do so "when there has been a change in circumstances since the individual's initial release." *Rosado*, 2025 WL 2337099, at *12. Here, ICE provided Mr. Hotak with no process prior to jailing him again, there has been no material change in circumstance meriting his reincarceration, and Respondents now refuse to provide him with process. This factor also weighs in Mr. Hotak's favor.

Third, the Government's interest is not served by the process it gave Mr. Hotak because, once again, it gave him no process. The Supreme Court recognized that the government's interest in civil immigration detention is limited to "certain special and narrow nonpunitive circumstances." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (quotation omitted). Those limited interests are mitigation of flight and danger to the community. *Id.*; *Demore v. Kim*, 538 U.S. 510, 515, 527–28 (2018). The non-existent process to jail Mr. Hotak without notice, without cause, and without a hearing after releasing him over two years ago does not address the government's purported interests and reeks of arbitrariness. *Lopez*, 2018 WL 2932726 at *12. This is especially true where—as here—the noncitizen "was released pursuant to a process that involved a determination that he was neither a danger to himself or others and" then re-detained "without prior notice, a showing of changed circumstances, or any meaningful opportunity to respond . . .

.” *Id.*; *See Saravia v. Sessions*, 280 F.Supp.3d 1168, 1176 (N.D. Cal. 2025) (“Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk). Making matters worse, ICE has jailed Mr. Hotak for 60 days without even presenting him before a neutral adjudicator to consider whether he is properly in removal proceedings at all.¹⁴ This factor therefore also weighs in his favor.

Under the circumstances, courts repeatedly find that ICE’s failure to provide noncitizens with notice and the opportunity to be heard prior to reincarceration violates procedural due process. *E.g.*, *Hyppolite v. Noem*, ---F.Supp.3d---, 2025 WL 2829511, at *16 (E.D.N.Y. 2025); *Grigorian v. Bondi*, 25-cv-22914-RAR, 2025 WL 2604573, at *6–10 (S.D.Fla. Sept. 9, 2025); *Espinoza v. Kaiser*, 1:25-cv-01101 JLF SKO, 2025 WL 2581185 (E.D.Ca. Sept. 5, 2025); *K.E.O. v. Woosley*, No. 4:25-cv-74-RGJ, 2025 WL 2553394, at *3 (W.D.Ky. Sept. 4, 2025); *Zhu v. Genalo*, 1:25-cv-06523 (JLR), 2025 WL 2452352, at *5–9 (S.D.N.Y. Aug. 26, 2025); *Gomes v. Hyde*, 804 F.Supp.3d 265, 275–75 (D. Mass. 2025); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 WL 2443453, at *5 (D. Mass. June 20, 2025); *Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137, 163–64 (W.D.N.Y. 2025); *See Cruz Valera v. Baltazar*, 1:25-cv-03744-CNS, 2025 WL 3496174, at *3–4 (D. Colo. Dec. 5, 2025). This Court should do the same.

a. The IJ’s Reliance on *Matter of Q. Li* Misses the Mark.

The IJ’s use of *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) compounds Respondents’ errors. “In *Q. Li*, the BIA explained that a [noncitizen] arrested without a warrant while arriving in the United States, *paroled*, and then served a notice to appear, *which terminated parole*, is detained pursuant to § 1225(b)(2)(A).” *Torres v. Wamsley*, ---F.Supp.3d---, 2025 WL 2855379, at *4 (W.D. Wash. Oct. 8, 2025) (emphasis added). Release on parole upon attempted entry to the United States

¹⁴ Exh. 10 – “EOIR Case Information”

is automatically revoked upon the issuance of a Notice to Appear. 8 U.S.C. § 1182(d)(5)(A) (requiring the return to custody upon termination of parole); 8 C.F.R. § 212.5(e)(2) (“When a charging document is served on the [noncitizen], the charging document will constitute written notice of termination of parole”). Therefore, the noncitizen in *Q. Li* “lacked any apparent basis to argue that her detention was governed by Section 1226(a), and, because her grant of humanitarian parole under Section 1182(d)(5)(A) had been terminated, DHS was required by Section 1225(b)(2) to continue detaining her.” *Gomes*, 804 F.Supp.3d at 276.

“The circumstances here are entirely different.” *Id.* “After being arrested in [September 2023, Mr. Hotak] was immediately issued a Notice to Appear and then conditionally paroled on an Order of Recognizance issued under Section 1226(a).” *Id.* Conditional parole is

Discretionary and made on a case-by-case basis. An immigrant who has been detained at the border may be paroled for humanitarian reasons or due to it providing significant public benefit (8 U.S.C. § 1182(d)(5)(A)), *or she may be conditionally released (8 U.S.C. § 1226(a))* A person on conditional parole is usually released on their own recognizance subject to certain conditions such as reporting requirements.

Espinoza, 2025 WL 2675785, at *6 (emphasis added). Section § 1225(b)(2) therefore does not apply and Respondents incarceration of Mr. Hotak thereunder without bond is illegal.

B. Mr. Hotak Faces Imminent, Irreparable Harm

Respondents incarcerate Mr. Hotak 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 petitioner 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 Mr. Hotak 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 Mr. Hotak. 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”). Mr. Hotak seeks a remedy that adequately addresses Respondents’ ongoing and repeated statutory and constitutional violations that keep him and others unlawfully in Respondents’ 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 an order by this Court for 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”). In sum, “[h]abeas is at its core a remedy for unlawful executive action [and] the remedy for unlawful detention ‘is, of course, release.’” *Gerardo Heli Avilez Aguinaga v. Warden et al.*, 4:26-0137, 2026 WL 266510, at *2 (S.D. Tex. Feb. 2, 2026).

Considering Respondents’ continued lawlessness in the face of this District’s uniform denial of Respondents’ position, n. 2, *supra*, and the overwhelming number of district court decisions across the country finding their interpretation unlawful, n. 1, *supra*, the appropriate remedy in this case is for this Court to order immediate release without further conditions and

without the need for an IJ custody hearing. That is especially true where, as is here, ICE already decided that Mr. Hotak was neither a risk of flight nor a danger to the community, released him from custody, and then reincarcerated him without notice, cause, or an opportunity to be heard.

a. Immediate Release is Necessary because ICE Incarcerates Mr. Hotak without a Valid Reason.

As discussed *supra*, ICE's interest in jailing people like Mr. Hotak is limited to "certain special and narrow nonpunitive circumstances." *Zadvydas*, 533 U.S. at 690. Those limited interests are mitigation of flight and danger to the community while the government seeks removal. *Id.*; *Demore*, 538 U.S. at 515, 527–28.

Here, ICE jails Mr. Hotak without simultaneously seeking his removal.¹⁵ In fact, ICE has jailed Mr. Hotak for 60 days without filing a charging document in immigration court.¹⁶ In other words, ICE has not even begun to prosecute his case. ICE's decision to keep Mr. Hotak incarcerated therefore serves no legitimate purpose and his immediate release is necessary. That is especially true, as here, when ICE released him years ago after having already concluded that he is neither a risk of flight nor a danger to the community.

b. Immediate Release is Necessary because ICE is Likely to Violate any Other Remedy.

Immediate release is necessary because of ICE's rampant violation of federal court orders, including numerous in this district. *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); *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

¹⁵ *See* Exh. 10.

¹⁶ *Id.*

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); *Ugarte Hernandez*, 25-cv-04066-RBJ, ECF 17 (D. Colo. filed Jan. 20, 2025) (noting ICE keeping petitioner incarcerated for five additional days despite court ordering petitioner released on bond); *Velazquez de Leon*, 25-cv-03805-RBJ, ECF 20, 21 (D. Colo. filed Jan. 5, 2025) (noting IJ ordering petitioner released on bond on Dec. 30, 2025 but Respondents preventing payment of the bond until Jan. 7, 2025); *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); *Portillo Martinez v. Baltazar, et al.*, 1:26-cv-00106-PAB, 2026 WL 194163, ECF 15 (D. Colo. filed Feb. 6, 2026) (noting ICE's refusal for four days to accept bond payment).

ICE's recalcitrance includes its manipulation of and monopoly over its bond payment system, through which it refuses to accept bond payments for at least twenty-four hours after an IJ orders release on bond.¹⁷ Given these examples of Respondents' continued due process violations in this District despite federal court orders, this Court should order immediate release from custody. This would provide a remedy for the unlawful detention, more likely guarantee compliance by Respondents, and avoid the need for further litigation to enforce this Court's order.

Federal courts throughout the country have seen similar recalcitrance and refusal by Respondents 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.*

¹⁷ Exh. 9., at *2, Email with CeBonds stating that ICE will not process bond payments for 24 hours to give ICE time to file an automatic stay.

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). Even the media has taken notice.¹⁸

Compliance with federal court orders in habeas corpus cases by both ICE and EOIR have reached a nadir. In *Juan T.R. v Noem*, 26-cv-0107 (PJS/DLM), 2026 WL 232015 (D. Minn. Jan. 28, 2026). Chief Judge Patrick Schiltz of the United States District Court for the District of Minnesota issued an order to show cause, ordered the personal appearance of Todd Lyons, Acting Director of ICE, and excoriated the Respondents, who “neither held a bond hearing within the required time nor released” the Mr. Hotak in direct violation of the Court’s order. *Id.*, *1. In his order, Chief Judge Schlitz highlighted the Respondents’ ongoing and systemic pattern of noncompliance:

Attached to this order is an appendix that identifies 96 court orders that ICE has violated in 74 cases. The extent of ICE’s noncompliance is almost certainly substantially understated. This list is confined to orders issued since January 1, 2026, and the list was hurriedly compiled by extraordinarily busy judges. Undoubtedly, mistakes were made, and orders that should have appeared on this list were omitted.

This list should give pause to anyone—no matter his or her political beliefs—who cares about the rule of law. ICE has likely violated more court orders in January 2026 than some federal agencies have violated in their entire existence. The Court warns ICE that future noncompliance with court orders may result in future show-cause orders requiring the personal appearances of Lyons or other government

¹⁸ Cheney, Kyle, POLITICO, *How ICE Defies judges’ orders to release detainees, step by step* Feb. 10, 2026 (available at <https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727?cid=apn>),

officials. *ICE is not a law unto itself*. ICE has every right to challenge the orders of this Court, but, like any litigant, ICE must follow those orders unless and until they are overturned or vacated.

Id. (emphasis added).

Making matters worse, even if Respondents hold a custody hearing and bond is granted, ICE has 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 Respondents to allow Mr. Hotak 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 chorus. *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").¹⁹ And once again, even if they do not invoke the automatic stay, ICE's electronic

¹⁹ 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 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

system prevents people from paying bond for at least twenty-four hours after an IJ orders release on bond.²⁰ Or, ICE will just altogether prevent someone from paying bond for days without reason. *E.g., Portillo Martinez v. Baltazar*, 1:26-cv-00106-PAB, ECF 15 (D. Colo. filed Feb. 6, 2026) (noting ICE’s refusal to accept bond payment for four days after an IJ ordering release on bond).

The severity of ICE’s lawlessness is unprecedented. *Juan T.R.*, 2026 WL 232015, at *1. Immediate release is the only adequate remedy.

c. Immediate Release is Necessary because EOIR is No Longer Impartial.

Habeas courts in this district and throughout the country have questioned whether EOIR will comply with their orders to hold a custody hearing, conduct a custody hearing correctly and apply the correct burden of proof, or address continued custody after release from incarceration. *E.g., Cervantes Arredondo*, 1:25-cv-03040-RBJ, ECF 26 (D. Colo. Dec. 18, 2025); (granting motion to enforce due to failure of the IJ to properly apply the burden of proof to DHS as required by the Court’s habeas order); *Gomez Rodriguez v. Noem*, 2:25-cv-01115, 2025 WL 3771268, *2 (M.D. Fla. 31, 2025) (noting that “[i]n other cases before this Court, the Respondents 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

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 n. 7.

²⁰ Exh. 9., at *2, Email with CeBonds stating that ICE will not process bond payments for 24 hours in order to give ICE time to file an automatic stay.

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 Respondents 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”).

EOIR’s refusal to follow federal court orders as well should come as no surprise; it is no longer an agency independent from the Trump administration’s goal for mass deportations. Indeed, former IJs fired during the second Trump administration are sounding the alarm. One former IJ summarizes the situation well:

I can tell you that today, the immigration courts are substantively dead. They are completely absent of due process. Of fair hearings. They exist only for show, and in name only. Period. The courts are dead. If you’re concerned about doing due process of fair hearings, they’re gone. So we can start from that position.²¹

But this Court need not take a single former IJ at their word. Evidence of EOIR’s rampant failure to provide due process during the second Trump administration is voluminous.

i. *The Trump Administration’s Purge of IJs it Sees as Obstacles to its Mass Deportation Plan.*

The Trump administration fired 128 IJs as of September 26, 2025.²² The administration did not give the terminated IJs reasons for their firing, but former IJ Kim explained that: “I do not know the exact reason for my termination, but most of those dismissed, including myself, were judges with high asylum approval rates.”²³ Former IJ Kim is not alone in this sentiment. Former

²¹ Radley Balko, “*The courts are dead.*” *An interview with a fired immigration judge*, The Watch (Jan. 8, 2026), <https://radleybalko.substack.com/p/the-courts-are-dead-an-interview>

²² *Trump Administration Continues Firing Immigration Judges -- IFPTE responds*, IFPTE (Sept. 26, 2025), <https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-responds>

²³ Woo-Sun Lim, *Former judge highlights legal failures in U.S. worker detentions*, The Dong-A Ilbo (Sept. 20, 2025), <https://www.donga.com/en/article/all/20250920/5859412/1>.

IJ Soper stated that he believes the current administration “does not fundamentally see the immigration courts as neutral-decision makers. I think that they see the immigration courts as a tool of the administration to advance its policy objectives.”²⁴

Moreover, IJs express that there is a climate of fear designed to ensure compliance with the administration’s deportation goals. Former IJ Koelsch described it as “an atmosphere of paranoia and fear, which is exactly what they want.”²⁵ Once again, this IJ is not alone. Former IJ Caldas explained that IJs are working “under constant threat of getting fired if they don’t follow certain rules from leadership.”²⁶

Due to this climate of fear, the remaining IJs are unable to independently adjudicate the cases before them. Former IJ Young explained: “I’ve talked to many of [the judges still serving] and they’re like, ‘When I go to court, I am concerned about applying the law, but I’m also concerned that I should deny more, because if I don’t, then I’ll get fired.’”²⁷ This climate forced some IJs to quit. Former IJ Cade stated: “I felt I might have to compromise my ethics and might be put in a place where I felt like I was going to be asked to violate due process. So I left and went to private practice.”²⁸

In other words, IJs are no longer independent adjudicators. They are pressured to comply with the administration’s goal of mass deportation. This is seen in other ways too.

²⁴ Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour (Nov. 12, 2025), <https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog>.

²⁵ Marco Poggio, *Judges See an Immigration Court Guttled from Inside*, Law360 (Oct. 31, 2025), <https://www.law360.com/articles/2381003/judges-see-an-immigration-court-guttled-from-inside>.

²⁶ Isabela Dias, *“Fired for No Reason”: Former Immigration Judges Speak Out Against Trump’s Assault on the Courts*, Mother Jones (Oct. 9, 2025), <https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/>

²⁷ Poggio, *supra* note 21.

²⁸ Poggio, *supra* note 21.

ii. *The Trump Administration's Purge of Appellate Judges it Sees as Obstacles to its Mass Deportation Plan.*

The Trump administration fired all of Former President Biden's appointees to the BIA, reducing the BIA's members from 28 to 15.²⁹ The change had an immediate impact. As of January 22, 2026, the reconstructed BIA has issued 71 published decisions.³⁰ Of those, 69 decisions (97%) favored ICE.³¹ In contrast, during Biden's entire four-year term, the BIA issued 76 published decisions.³² Of those, 46 decisions (60%) favored ICE. The numbers speak for themselves.

iii. *The Administrations Recruitment of "Deportation Judges."*

To replace the appellate judges and IJs the administration fired, the DOJ launched a recruitment campaign explicitly for "deportation judges."³³ DHS promoted these openings on social media with enforcement-based language: "Bring the hammer down on criminal illegal aliens" and "Defend your communities, your culture, your very way of life."³⁴

In addition to its recruitment of "deportation judges," the DOJ authorized up to 600 military lawyers to server as temporary IJs for renewable terms not to exceed six months, while eliminating many of the requirements to serve. For example, the administration removed all prior requirements

²⁹ Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025), <https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/>

³⁰ Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), <https://www.justice.gov/eoir/volume-29>.

³¹ Of the remaining two decisions: 1 decision was neutral (involving attorney sanctions) and 1 decision disfavored the administration.

³² Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025), <https://www.justice.gov/eoir/volume-28>. (First decision, *Matter of DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021)

³³ The Guardian, *US justice department recruiting legal experts to serve as 'deportation' judges': Trump officials have been purging immigration judges whose philosophies are different, largely in sanctuary cities* (Nov. 21, 2025), <https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges>

³⁴ dhsgov, Instagram (Nov. 21, 2025), <https://www.instagram.com/p/DRVT8DmCQKD/?hl=en>.

related to having served as former IJ or an administrative judge within another agency, swapping those criteria with “any attorney” being permitted to serve, as long as they attend a two week training session, which was previously six weeks.³⁵ In response to this surge of temporary IJs with military backgrounds, an advisor to Respondent Noem stated “I see more deportations of illegal immigrations in the near future.”³⁶ Once again the proof is in the pudding.

iv. *EOIR Issued Explicit Directives to Ignore Federal Court Orders Contrary to the Administration’s Deportation Objectives.*

In perhaps the most startling example, the Chief IJ for EOIR explicitly ordered IJs to ignore a federal court order protecting noncitizens’ access to bond. On November 20, 2025, the Central District of California granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners’ proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners’ Motion for Partial Summary Judgment). The declaratory judgement held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

³⁵ Margy O’Herron, *Using Military Lawyers as Immigration Judges is Ill-Advised and Potentially Illegal*, Brennan Ctr. for Just. (Sept. 29, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/using-military-lawyers-immigration-judges-ill-advised-and-potentially>.

³⁶ Radley Balko, *“The courts are dead.” An interview with a fired immigration judge*, The Watch (Jan. 8, 2026), <https://radleybalko.substack.com/p/the-courts-are-dead-an-interview>

On December 18, 2025, the *Maldonado Bautista* court issued another order, explicitly vacating DHS' policy of applying § 1225(b) nationwide to members of the class. *Maldonado Bautista v. Santacruz*, ---F.Supp.3.---, 2025 WL 3713987, *22 (C.D. Cal. 2025) (“[B]ecause the Court declares the DHS policy unlawful, the Court must set aside the DHS policy. As such, the Court VACATES the DHS Policy under the APA”) (emphasis in original). Rather than comply with the nationwide vacatur, Chief IJ Riley sent the following email to all IJs instructing assistant chief IJs to:

[P]rovide the following guidance to all immigration judges forthwith: *Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay, or enjoin *Yajure Hurtado*. Therefore *Yajure Hurtado* remains binding precedent on agency adjudications. For clarification, declaratory judgments differ from injunctions in that the former clarifies the parties' legal rights and relationships without ordering specific action, while the latter is a court order compelling a party to do or stop doing a specific act. A declaratory judgment is not an equitable remedy and does not, by itself, have the effect of compelling specific action by a party. Thank you for your attention to this matter.³⁷

EOIR is now ordering IJs to ignore the federal courts.

In sum, the appropriate remedy here is for this Court to grant the petition and order immediate and full release from ICE custody. 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.

³⁷ Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026), <https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista>.

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 Mr. Hotak remaining unlawfully in Respondents' custody. Courts have increasingly settled on this remedy considering the Constitutional issues presented and Respondents' 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. 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 such custody redetermination hearing adhere to strict constitutional protections. Those protections should include, at a minimum, that Respondents 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, Respondents' basis for incarcerating Mr. Hotak 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 Respondents 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 Mr. Hotak’s ability to pay when setting an amount of bond. *U.S. v. Salerno*, 481 U.S. 739, 754 (1987) (“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 [Mr. Hotak’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 Respondents’ frequent and unlawful use of the autostay provision and its use of the threat of that provision to delay bond payment by at least twenty-four hours, any order

requiring a custody hearing at which bond is granted should explicitly enjoin the government from invoking the automatic stay based on Respondents' 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 (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"), 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 Mr. Hotak'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. In the alternative, this Court should conduct a custody redetermination hearing pursuant to § 1226(a): (1) placing a clear and convincing evidence burden on Respondents 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) consider Mr. Hotak's ability to pay; (3) if bond is granted, enjoin Respondents from invoking the autostay provision and/or delaying Mr. Marreo Yera's ability to pay bond while Respondents consider whether it should invoke the autostay provision and (4) enjoin Respondents from arguing that this

Court cannot consider Mr. Hotak's custody due to DHS' alleged failure to conduct an initial custody determination.

Also in the alternative, Mr. Hotak requests this Court order Respondents to bring Mr. Hotak before an IJ within seven days for a custody hearing pursuant to § 1226(a) where this Court or the IJ must implement specific constitutional protections including: (1) placing a clear and convincing evidence burden on Respondents 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 Mr. Hotak's ability to pay. The Court should also enjoin Respondents 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 Respondents convinced this Court or an IJ by clear and convincing evidence that they are necessary. The Court should also enjoin Respondents from invoking the autostay provision or delaying Mr. Marreo Yera's ability to pay bond while Respondents consider whether it should invoke the autostay provision should bond be granted, and enjoin Respondents from arguing that this Court or the IJ cannot consider Mr. Hotak's custody due to DHS' alleged failure to conduct an initial custody determination.

The Court should further enjoin the Respondents from transferring Mr. Hotak outside the District of Colorado during the pendency of this litigation.

Dated: Feb. 16, 2026

Respectfully submitted,

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CERTIFICATE OF CONFERRAL

I hereby certify, consistent with D. Colo. Local Rule 7.1, that our office conferred via email with counsel for Respondents-Defendants, Kevin Traskos of the US Attorney's Office for the District of Colorado regarding the relief requested herein. Respondents-Defendants have yet to provide their position on this motion.

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CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on February 16, 2026 I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Ana Loera, 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 February 19th, 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 Respondents.

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