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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Wilson Paz Aguilera

Petitioner,

v.

Sergio ALBERRAN, Acting Field Office
Director of San Francisco Office of
Detention and Removal, U.S. Immigrations
and Customs Enforcements; U.S. Department
of Homeland Security;

Todd M. LYONS, Acting Director,
Immigration and Customs Enforcement, U.S.
Department of Homeland Security;

Kristi NOEM, in her Official Capacity,
Secretary, U.S. Department of Homeland
Security; and

Pam BONDI, in her Official Capacity,
Attorney General of the United States;

Respondents - Defendants,

CASE NO.: 1:25-CV-10619-JLT-SAB

PETITIONER'S REPLY TO
RESPONDENT'S OPPOSITION TO
EMERGENCY EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

PETITIONER'S REPLY TO GOVERNMENT'S OPPOSITION TO EMERGENCY EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Petitioner, Wilson Omar Paz Aguilera, ("Mr. Paz Aguilera"), respectfully submits this Reply to Respondent's Opposition to Petitioner's request for temporary restraining order and preliminary injunction.

When Mr. Paz Aguilera entered the United States without inspection on April 27, 2019, Mr. Paz Aguilera was detained by Department of Homeland Security ("DHS").

On April 30, 2019, DHS released Mr. Paz Aguilera on his own recognizance. Since then, Petitioner has done everything the government asked him to do; he has diligently attended every immigration court hearing and ICE check-in including his ISAP appointment on June 6, 2025, that he attended despite DHS's mischaracterization to the contrary.

On July 7, 2024, a Notice to Appear was filed with the immigration court and Mr. Paz Aguilera was placed in full removal proceedings. Mr. Paz Aguilera's first immigration court date was set for September 5, 2025 at 9:00 AM.

On January 13, 2025, Mr. Paz Aguilera moved to have his immigration case removed from calendar while his U-Visa application was pending [REDACTED]

On January 24, 2025, the immigration Judge administratively closed Mr. Paz Aguilera's matter based on his pending U-Visa, putting a pause to his removal proceedings.

On July 30, 2025, the Department of Homeland Security moved to re-calendar petitioner's removal proceedings however that motion was denied by the immigration judge thus Mr. Paz Aguilera's case remains pending but off calendar.

Mr. Paz Aguilera continues to suffer from health issues which require him to take insulin and metformin. He is not getting adequate care at the California City detention facility. On September 15, 2025, Petitioner was hospitalized because of his health issues. Mr. Paz Aguilera is now detained without any medication, putting him at risk of substantial harm and further hospitalization.

On November 17, 2025, Mr. Paz Aguilera *voluntarily* attended his last check-in appointment with ICE in San Francisco. At that time, ICE detained him.

1 DHS is now detaining Petitioner solely on the purported ground that Petitioner is not
2 eligible for bond under section 235(b)(2)(a) of the Immigration and Nationality Act; 8 U.S.C. §
3 1225(b). However, INA 235(b)(2)(a) does not apply to Petitioner.

4 It also appears that the Government states that Mr. Paz Aguilera missed an ISAP
5 biometrics appointment, but the government has made no further arguments as to whether
6 missing that appointment demonstrates that Mr. Paz Aguilera is a flight risk or danger justifying
7 continued detention. Therefore, Petitioner's detention violates both the Immigration and
8 Nationality Act ("INA") and Petitioner's Fifth Amendment right to due process of law.

9 **LEGAL STANDARD**

10 A party seeking a temporary restraining order and preliminary injunction must establish
11 "[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in
12 the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an
13 injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U. S.
14 7, 20 (2008). "If a plaintiff can only show that there are serious questions going to the merits –
15 a lesser showing than likelihood of success on the merits – then a preliminary injunction may
16 still issue if the balance of hardships tips sharply in the plaintiff's favor, and the other two *Winter*
17 factors are satisfied." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir.
18 2014)(internal quotation marks and citations omitted). "When the Government is the opposing
19 party," the final two factors "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

18 **ARGUMENT**

19 **A. Likelihood of Success on the Merits** 20 **a. Due Process**

21 The Due Process Clause protects all persons within the United States from being "deprived
22 of life, liberty, or property, without due process of law." U.S. Const. amend. V. The Due Process
23 Clause applies equally to noncitizens unlawfully present in the United States, like Mr. Paz
24 Aguilera. See *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

25 Although Mr. Paz Aguilera's claim is constitutional, it ultimately turns on whether either
26 section 1225(b) or section 1226(a) provides a valid basis for Mr. Paz Aguilera's continued
27 detention. Here, since Mr. Paz Aguilera has not been properly detained under either statutory
28 detention authority, a temporary restraining order and preliminary injunction must be issued.

i. Mandatory Detention Under 8 U.S.C. § 1225(b)(2)(A)

The Respondents invoke section 1225(b)(2)(A) as a basis for mandatory detention which provides the following:

In the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for proceeding under section 1229a of this title.
U.S.C §1225(b)(2)(a).

There is no real dispute that Mr. Paz Aguilera is “an applicant seeking admission” who is not “clearly and beyond a doubt entitled to be admitted.” *Id.* However, the mandatory detention provision of 8 U.S.C. 1225(b) does not apply to Mr. Paz Aguilera, because Mr. Paz Aguilera is *not* “an alien seeking admission” within the meaning of the statute.

A noncitizen released into the interior of the country pending deportation proceedings is not “seeking admission”. See, e.g., *Valencia Zapata v. Kaiser*, 2025 WL 2741654, at * 10 (N.D. Cal. Sept. 26, 2025); *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025).

Respondents argue that section 1225(a)(3) justifies detention. Namely, that “every applicant for admission ‘must be inspected by immigration officers’ to ensure that they may be admitted into the country consistent with U.S. immigration law.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018)(citing section 1225(a)(3) which provides that “[all aliens...who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” The government concludes that pursuant to the statutory scheme, detention pending removal proceedings is mandatory. Applied here, that logic suggests that an “applicant for admission” is merely one kind of noncitizen “seeking admission,” which would mean the use of the phrase “seeking admission” in section 1225(b)(2) carries no additional meaning.

However, in section 1225(b)(2)(A), Congress felt the need to cabin the application of mandatory detention to only those “seeking admission” *after* it already limited the provision’s scope to “applicants for admission.” In that context, therefore, it is far from obvious that Congress intended the two terms to be completely coterminous.

1 Fortunately, the remainder of the statutory scheme provides probative evidence of
2 Congress's intent which resolves the interpretive question in favor of Mr. Paz Aguilera. First,
3 in January 2025, Congress amended the provision governing discretionary detention – 8 U.S.C.
4 § 1226 – to add an additional category of noncitizens subject to mandatory detention. *See* Laken
5 Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). “This category includes noncitizens who are
6 (1) inadmissible under 1182(6)(A)(present without admission or parole),
7 (6)(C)(misrepresentation), or (7)(C)(lack of proper documentation) and (2) have been charged
8 with one of certain enumerated crimes.” *Salcedo Aceros*, 2025 WL 2637503, at *10.

9 Under Respondents' view, however, this class of individuals was already subject to
10 mandatory detention under section 1225(b)(2)(A) because they satisfy the statutory definition of
11 “applicants for admission.” Therefore, adopting Respondent's theory would be to presume
12 Congress intended its amendment to have “[no] real and substantial effect” – a presumption the
13 Supreme court had admonished is appropriate. *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995).

14 Moreover, section 1225(b)'s implementing regulations suggest that it was not intended
15 to sweep as broadly as Respondents claim. 8 C.F.R. § 235.3(c)(1) provides that section 1225(b)
16 shall apply to “any arriving alien” that appears inadmissible and is placed in standard removal
17 proceedings. By limiting the scope of section 1225(b) in this way, the regulation effectively
18 defines an “applicant for admission” who is “seeking admission” to be an “arriving alien” – a
19 definition that would exclude those like Mr. Paz Aguilera who are now in the interior of the
20 country. If Respondents are correct that Congress meant for section 1225(b) to apply more
21 broadly all along, it could have corrected that language but it did not.

22 Respondents' construction of the statute would also seem to shrink the discretionary
23 detention provision, section 1226, beyond recognition. Section 1226 provides that “on a warrant
24 issued by the Attorney General, an alien may be arrested and detained pending a decision on
25 whether the alien is to be removed.” 8 U.S.C. § 1226(a). That provision also permits the Attorney
26 General to “release the alien...on conditional parole.” *Id.* § 1226(a)(2)(B). The implementing
27 regulations permit an ICE officer to release the alien in the officer's discretion “provided that the
28 alien must demonstrate to the satisfaction of the officer that such release would not pose a danger
to property or persons, and that the alien is likely to appear for any future proceedings.” 8 U.S.C.
§ 236.1(c)(8).

For many years, the understanding – shared by the Executive and the Supreme Court –
PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION

1 was that section 1226, not section 1225, governed immigration arrests conducted within the
2 interior of the United States. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being
3 applicants for admission, aliens who are present without having been admitted or paroled ... will
4 be eligible for bond and bond redetermination.”): *Jennings v. Rodriguez*, 583 U.S. 281, 289
5 (2018) (“In sum, U.S. Immigration law authorizes the Government to detain certain aliens seeking
6 admission into the country under §§ 1226(a) and (b)(2). It also authorizes the Government to
7 detain certain aliens *already in the country pending the outcome of removal proceedings* under
8 §§ 1226(a) and (c).”)(emphasis added). Respondent’s view is that virtually every noncitizen in
9 the interior of the country is both an “applicant for admission” and is “seeking admission,”
10 making all of them subject to mandatory detention under the statutes. Because a noncitizen
11 cannot simultaneously be subject to mandatory detention and discretionary detention, the result
12 is that section 1226 will apply only to an extremely small group of noncitizens: those present in
13 the United States who have been admitted but now lack legal status. *See, e.g., Jennings*, 583
14 U.S. at 289-90. The statutory scheme is devoid of any indication that Congress meant for section
15 1226 to be that narrow. In sum, section 1225(b)(2)(A) does not supply statutory authority to
16 detain Mr. Paz Aguilera.

15 **ii. Discretionary Detention under 8 U.S.C. § 1226(a)**

16 Though most of Respondents’ submission is dedicated to arguing that Mr. Paz Aguilera
17 was properly detained under section 1225(b) mandatory detention requirements, they seem to
18 argue to justify Mr. Paz Aguilera’s detention under section 1226(a) as well. Section 1226(a)
19 provides that an “alien may be arrested and detained pending a decision on whether the alien is
20 to be removed.” It further provides that the Attorney General “may continue to detain the arrested
21 alien” or “may release the alien on a bond ...or conditional parole.” 8 U.S.C. § 1226(a).

22 Respondents submitted the declaration of Deportation Officer Patrick Cruz, the agent
23 assigned to Mr. Paz Aguilera’s case. Officer Cruz declares that Mr. Paz Aguilera violated the
24 terms of his release by failing to comply with an ISAP appointment biometrics. Officer Patrick
25 Cruz declares that “an ISAP officer had to contact the Petitioner and ask him to comply with his
26 check-in requirements.” Notably Deportation Officer Cruz does not state whether Mr. Paz
27 Aguilera complied with the ISAP’s officer follow-up reminder to complete biometrics nor did
28 Deportation Officer Cruz indicate whether ICE did anything on June 6, 2025 and if not why not.
Mr. Paz Aguilera understood that he had complied with all his requirements of release.

1 This justification is problematic. Though Mr. Paz Aguilera admits to being required to
2 check in with the government through ISAP, he denies ever having missed a check-in or ever
3 having been told by his case worker that he was noncompliant. The accusation that he was
4 noncompliant appears that stem from an incident that happened in June of 2025. At that time,
5 Mr. Paz Aguilera was never cited by ICE or ever scheduled an appointment by ICE regarding
6 non-compliance. Without any additional detail, there is simply not enough support for
7 Respondents' assertion that Mr. Paz Aguilera breached the terms of his release. Had he breached
8 the terms of his release in June, he should have been cited to appear in June.

9 The time of the alleged violations casts doubt on Respondents' asserted justification.
10 Why, if these violations rendered Mr. Paz Aguilera unworthy of remaining on release pending
11 the adjudication of his removal proceedings, did Respondents wait this long to rearrest him?
12 Respondents have no answers.

13 Even if Respondents' allegations that Mr. Paz Aguilera violated his release conditions
14 were credited, his detention would remain improper. Section 1226(a)'s implementing regulations
15 require release of a detained noncitizen unless the noncitizen poses a danger to the community
16 or is a flight risk. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196-97 (9th Cir. 2022). When
17 the noncitizen is initially detained, 8 C.F.R. § 236.1(c)(8) provides for release if the noncitizen
18 "demonstrate(s) to the satisfaction of the [ICE] officer that such release would not pose a danger
19 to property or persons, and that the alien is likely to appear for any future proceeding." See *id.*
20 If the ICE officer determines that the noncitizen should not be released, the regulations permit
21 the noncitizen to request a bond hearing before an immigration judge at any time before a removal
22 order becomes final. See 8 C.F.R. §§ 236.1(d)(1), 1003.19; *Rodriguez Diaz*, 53 F.4th at 1197.
23 In this hearing, too, the inquiry is whether the noncitizen is "a threat to national security, a danger
24 to the community at large, likely to abscond, or otherwise a poor bail risk." In *re Guerra*, 245
25 I&N Dec. 37, 40 (BIA 2006). Though the immigration judge may "consider various factors in
26 making this determination, including the individual's ties to the United States as well as his
27 employment history, criminal record, history of immigration violations, and manner of entry into
28 this country," those factors are considered to assess dangerousness and flight risk. *Rodriguez*
Diaz, 53 F.4th at 1197.

Detention is permitted under section 1226(a) only if Mr. Paz Aguilera is dangerous or a
flight risk. Respondents have not come close to showing that, and in fact, have hardly even tried.

1 Though they point to a minor technical violation, they have not explained how this violation
2 makes Mr. Paz Aguilera dangerous or a flight risk. The Respondent's do not address flight risk
3 nor safety because those factors clearly weigh in favor of Mr. Paz Aguilera's immediate release.
4 In fact, the immigration judge removed Mr. Paz Aguilera's case from calendar indicating that
5 Mr. Paz Aguilera is a low priority for removal. The immigration officer in his declaration says
6 nothing about Mr. Paz Aguilera's serious health issues even though both Mr. Paz Aguilera and
7 his attorney informed the ICE officer of Mr. Paz Aguilera's serious health issues.

8 As explained, the determination that Mr. Paz Aguilera's detention is not authorized under
9 section 1225(b)(2)(A) or section 1226(a) resolves his Due Process claim in his favor. There is
10 no need to delineate when his liberty interest arose or what the scope of that liberty interest now
11 is because the government may never detain individual that enjoys the protection of the Due
12 Process Clause without a legal basis to do so.

13 **B. Remaining Preliminary Injunction Factors**

14 The remaining preliminary injunction factors – irreparable harm, the balance of equities,
15 and the public interest – weigh in favor of Mr. Paz Aguilera. Illegal detention is an
16 unquestionably serious impingement on an individual's constitutional rights. Since
17 Respondent's lack a basis to detain him, he suffers from irreparable harm not limited to serious
18 health issues that have required a recent hospitalization.

19 The final two factors – which merge here because the government is the opposing party
20 – weigh in Mr. Paz Aguilera's favor. While the government has a compelling interest in
21 enforcing the immigration laws, granting relief to Mr. Paz Aguilera will not seriously impinge
22 its ability to do so. The government has already placed Mr. Paz Augilera in full removal
23 proceedings under section 1229a, thus granting Mr. Paz Aguilera's immediate release will not
24 delay its ability to prosecute his removal. Moreover, his immediate release does not preclude the
25 government from detaining Mr. Paz Aguilera if it can convince a neutral arbiter that he is subject
26 to detention under section 1226(a) – that is, that he is a danger or a flight risk. Therefore, at
27 worst, immediate release imposes a minor delay on the government's execution of the
28 immigration laws.

Date: November 28, 2025

Respectfully Submitted,

/s/ Emilio Parker
Emilio Parker
Attorney For Petitioner
Wilson Paz Aguilera

VERIFICATION PURSUANT TO 28 U.S.C. 2242

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION

1 I am submitting this verification on behalf of the Petitioner because I am one of
2 Petitioner's attorneys. I have discussed the events described in the Petition with the Petitioner.
3 Based on those discussions, I hereby verify that the factual statements made in the attached
4 Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.
5

6 Executed on November 28, 2025, in Oakland, CA.

7
8 /s/ Emilio Parker
9 Emilio Parker
10 Attorney for Wilson Paz
11 Aguilera
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