UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01162

JUAN CARLOS MEMBRENO PORTILLO,

Petitioner-Plaintiff

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
GEORGE VALDEZ, 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 Juan Carlos Membreno Portillo ("Mr. Membreno") moves for a temporary restraining order against Respondents-Defendants ("Respondents") pursuant to Rule 65 and the All Writs Act. Mr. Membreno is a civil immigration detainee at the Immigration and Customs Enforcement (ICE) Denver Contract Detention Facility in Aurora, Colorado ("Aurora Facility"). Respondents incarcerated Mr. Membreno and now deny him release on bond under their erroneous, new interpretation of the Immigration and Nationality Act ("INA"). The Court should order Mr. Membreno's release (or that Respondents provide a custody hearing within 7 days). The Court should further enjoin Respondents from transferring Mr. Membreno 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 later 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. Membreno's detention.

Under Respondents' new theory, despite having lived in the country for years, Mr. Membreno is now "seeking admission" to the U.S. and thus subject to mandatory detention under § 1225(b)(2). This is a sharp contrast to Respondents' decades-long practice where § 1225 applied only "at the Nation's borders and ports of entry." *Jennings*, 583 U.S. at 287. It is also wrong. In

fact, Respondents' interpretation of the statute "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 "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 *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. Membreno 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).[2] In sum, the issues here are not new. Judges in this District have unanimously found that Respondents'

[1] *Sampiao v. Hyde*, 799 F.Supp.3d 14 (D. Mass. 2025); *Pizzaro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25-cv-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden et al.*, 799 F.Supp.3d 59 (D.N.H. 2025) ; *Lopez Santos v. Noem*, 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salcedo Aceros v. Kaiser et al.*, No 25-cv-06924-EMC (EMC), 2025 WL 2637503 (N.D. Ca. Sept. 12, 2025); *Barrera v. Tindall*, No. 3:25-cv-00541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Chafla et al. v. Scott*, 2:25-cv-00437-SDN, 2025 WL 2688541, at *6 (D. Me. Sept. 21, 2025); *Maldonado Vasquez v. Feeley*, 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Lopez-Arevelo v. Ripa*, 2025 WL 2631828 (W.D. Tex. Sept. 22, 2025); *Lepe v. Andrews*, 801 F.Supp.3d 1104 (E.D. Cal. 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923, at *1 (N.D. Cal. Sept. 25, 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); *B.D.V.S. v. Forestal*, 25-cv-01968, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); 2025); *Da Silva v. Bondi*, No. 25-cv-12672-DJC, 2025 WL 269163 (D. Mass. Oct. 21, 2025).

[2] As District Judge Sweeney held, not only is *Buenrostro* non-binding, it is also wrong. *Singh v. Baltazar*, ---F.Supp.3d---, 2026 WL 352870, at **3 – 6 (D. Colo. Feb. 9, 2026). District Judge Crews agrees, noting that Judge Sweeney "surgically dismantles the Fifth Circuit's reasoning." *Marrero Yera v. Baltazar, et al.*, 1:26-cv-00746-SKC-SBP, 2026 WL 472014, at *2 (D. Colo. Feb. 19, 2026).

novel and unprecedented interpretation of the statute is illegal. *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, ECF 16, at *4 (D. Colo. Jan. 15, 2026).[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). 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 in the country (§ 1225). Prior to 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), the statutory authority for custody was 8 U.S.C. § 1252(a) (1994), authorizing detention during "deportation" proceedings and release on bond. Those "deportation" proceedings governed the detention of anyone in the United States, regardless of manner of entry. IIRIRA maintained that authority for detention and release on bond at 8 U.S.C. § 1226(a). *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining the new § 1226(a) "restate[d] the current provisions in [then 8 U.S.C. § 1252(a)] regarding the authority … to … detain, and release on bond…"). The IIRIRA also enacted new

[3] Exh. 1 – *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, EFF 16 (D. Colo. Jan. 15, 2026)

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

[4] Exh. 2, "Interim Guidance Regarding Detention Authority for Applicants for Admission."

(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. Membreno is Ideally Qualified for Bond

Mr. Membreno is detained solely because of Respondents' claim that he is subject to § 1225(b). Respondents charge him with entering the United States without inspection and seek to remove him under 8 U.S.C. § 1182(a)(6)(A)(i) for having entered without inspection or parole. Mr. Membreno has lived in the United States for approximately seven years. He has worked for years in the roofing industry, supporting himself and his family. Mr. Membreno has no criminal history that subjects him to mandatory detention. In sum, Mr. Membreno is an excellent candidate for bond.

II. Legal Standard for Granting Preliminary Relief

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

Respondents' policy violates the INA. As the Supreme Court explained, § 1225 is concerned "primarily [with those] seeking entry," i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 297 & 287. In contrast, § 1226 applies to people who, like

Mr. Membreno, are "already in the country" and are detained "pending the outcome of removal proceedings." *Id.* at 289. The INA's plain text, canons of statutory construction, the statutes' legislative history, the implementing regulations, and decades of agency practice all support this conclusion. The Federal Courts agree including a unanimity of judges in this District. [5]

1. **The text of § 1226(a) and canons of statutory construction demonstrate Mr. Membreno 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.[6] Section 1226(a), the INA's "default" detention authority,

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[5] *E.g.*, *Mendoza Gutierrez v. Baltasar et al.,* 1:25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Pineda v. Baltasar et al.*, 1:25-cv-2966, 2025 WL 3516291 (D. Colo. Oct. 20, 2025); *Loa Caballero v. Baltazar et al.*, 25-cv-03120, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Hernandez Vazquez v. Baltasar et al.,* 1:25-cv-3049-GPG, 2025 WL 4083603 (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), ECF 16; *Cervantes Arredondo v. Baltazar, et al.*, 1:25-cv-03040-RBJ (D. Colo. Oct. 31, 2025), ECF 21; *De Domingo Campos v. Baltazar*, 25-cv-3062, 2025 WL 4083609 (D. Colo. Nov. 13, 2025), ECF 33; *Ortiz Rosales v. Baltazar, et al.*, 25-cv-03275-GPG (D. Colo. Nov. 16, 2025), ECF 25; *Espinoza Ruiz v. Baltazar, et al.*, 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025), ECF 18; *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. Batazar et al.*, 1:25-cv-03919-RMR (D. Colo. Dec. 29, 2025), ECF 17; *Rodriguez Rodriguez v. Baltasar et al.*, 1:25-cv-03961-GPG (D. Colo. Dec. 30, 2025), ECF 20; *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, *4 (D. Colo. Jan. 15, 2026), ECF 16 (collecting cases and acknowledging the District's unanimity); *Portillo-Martinez v. Baltazar*, No. 26-cv-00106-PAB, 2026 WL 194163 (D. Colo. Jan. 26, 2026); *Chavez Amrenta v. Noem*, No. 26-cv-00236-PAB, 2026 WL 274634, (D. Colo. Feb. 3, 2026); *Hernandez v. Baltazar*, 26-cv-0276-WMJ-TPO, 2026 WL 304362 (D. Colo. Feb. 5, 2026); *De la Cruz v. Baltazar*, No.26-cv-00360-PAB, 2026 WL 439217 (D. Colo. Feb. 17, 2026).

[6] 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

Jennings, 583 U.S. at 281, applies to people detained "pending a decision on whether the [noncitizen] is to be removed," 8 U.S.C. § 1226(a). As the statute provides, this language includes both (1) people like Mr. Membreno 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. Membreno. *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 §

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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). Senior Judge Martinez from this District agrees. *Martinez-Orellana v. Hagan*, No. 26-cv-0355-WJM (D. Colo. Feb. 13, 2026) (attached as Exh. 3).

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, at *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. Membreno. 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 v. Hyde*, 792 F.Supp.3d 211, 221 (D. Mass. 2025) ("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, at *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. Membreno' 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. Membreno]." *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. Membreno.

Section § 1225's structure also supports § 1226(a) applying to Mr. Membreno. "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 v. Francis , 795 F.Supp.3d 475, 489 (S.D.N.Y. 2025); *See also* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29; H.R. Rep. No. 104-828, at 209. "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. *Martinez*, 792 F.Supp.3d at 219 (emphasis in original); *Lopez Benitez*, 795 F.Supp.3d at 489 (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, at *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 v. FCI Berlin, Warden et al.*, 799 F.Supp.3d 59, 70 (D.N.H. 2025). "[E]xamination is not an unbound concept. Rather, it is the specific legal process one undergoes while trying to enter the country." *Id.* (citations omitted). The regulations make that plain. 8 C.F.R. § 235.1(a) (noting that "scope of examination" occurs while on seeks to "enter the United States" "at a U.S. port-of-entry . . ."). Nor is the inspection requirement untethered to entry to the United States. See 8 U.S.C. § 1225(a)(3) ("All [noncitizens] who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers") (emphasis added). 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*, 799 F.Supp.3d at 70–71. 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*, 799 F.Supp.3d at 71 (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*, 804 F.Supp.3d at 258.

The implementing regulation for § 1225(b) supports Mr. Membreno'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 (quotation omitted); *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. Membreno 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*, 799 F.Supp.3d at 71. Respondents' reading of the statute is unlawful.

3. The legislative history further supports Mr. Membreno's argument.

IIRIRA's legislative history also supports the conclusion that § 1226(a) applies to Mr. Membreno. In the IIRIRA, Congress focused on recent arrivals who lacked documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29. Notably, Congress said nothing about subjecting all people present in the U.S. to mandatory detention.

Before the IIRIRA, people like Mr. Membreno 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. Membreno] were entitled to discretionary detention under [§] 1226(a)'s predecessor statute and Congress declared its scope unchanged … this background supports [Mr. Membreno'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).

B. Mr. Membreno Faces Imminent, Irreparable Harm

Respondents incarcerate Mr. Membreno 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. Membreno 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. Membreno. 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. Membreno 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. 5, *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.

a. 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 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 noncitizen 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).

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.[7] 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. 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).

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

[7] Exh. 4, 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.

required time nor released" the Plaintiff 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 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 noncitizens 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 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 procedural due process rights under the Fifth

Amendment");[8] *Rivas v. Baltazar*, 1:26-cv-44732, 2026 WL 444732 (D. Colo. Feb. 17, 2026) (same); *Granillo Chavarria*, 26-cv-0712-WJM, 2026 WL 696580 (D. Colo. Mar. 12, 2026) (same). And once again, even if they do not invoke the automatic stay, ICE's electronic system prevents people from paying bond for at least twenty-four hours after an IJ orders release on bond.[9] 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.

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[8] 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 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.

[9] Exh. 4., 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.

b. 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 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. [10]

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. [11] 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." [12] Former IJ Kim is not alone in this sentiment. Former 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." [13]

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." [14] Once again, this IJ is not alone. Former IJ Caldas

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[10] 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

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

[12] 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.

[13] 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.

[14] Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside.

explained that IJs are working "under constant threat of getting fired if they don't follow certain rules from leadership."[15]

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."[16] 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."[17]

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.

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.[18] The change had an immediate impact. As of January 22, 206, the reconstructed BIA has issued 71 published decisions.[19] Of those, 69 decisions (97%)

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[15] 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/

[16] Poggio, *supra* note 14.

[17] Poggio, *supra* note 14.

[18] 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/

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

favored ICE.[20] In contrast, during Biden's entire four-year term, the BIA issued 76 published decisions.[21] 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."[22] 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."[23]

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 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.[24] In response to this surge of temporary IJs with

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

[21] 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)

[22] 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

[23] dhsgov, Instagram (Nov. 21, 2025), https://www.instagram.com/p/DRVT8DmCQKD/?hl=en.

[24] 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.

military backgrounds, an advisor to Respondent Noem stated "I see more deportations of illegal immigrations in the near future."[25] 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.

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

[25] 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

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.[26]

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.

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. Membreno 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

[26] 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.

(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. Membreno was a due process violation on day one. *Velazquez de Leon*, 1:25-cv-03805-RBJ, ECF 19, at *8 (placing a clear and convincing evidence burden on Respondents because "mandatory detention under the wrong statute constitutes an ongoing due process violation, infringing on [Mr. Membreno'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)). In sum, this Court, should agree "with other courts in this district, as well as other circuit courts nationwide, 'that allocating

the burden to a noncitizen to prove that he should be released on bond under § 1226(a) violates due process as it assigns the risk of error to the party with the greater interest in their individual liberty as balanced against the Government's interests." *Alfaro Herrara v. Baltazar*, 1:25-cv-04014-CNS, 2026 WL 91470, at *10 (D. Colo. Jan. 13, 2026) (quotation and citations omitted).

Due process protections should also require an IJ to consider Mr. Membreno'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 petitioner's ability to pay a bond"); *Lopez-Romero v. Lyons*, 2:25-cv-01113, 2026 WL 92873, *7 (D.N.M. Jan. 13, 2026) (same).

Finally, due to 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"); *Rivas*, 2026 WL 444732 (same); *Granillo*, 2026 WL 696580 (same), 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.*, 2025 WL 3288354, at *7.

VI. Conclusion

Accordingly, the Court should grant a temporary restraining order (or preliminary injunction) requiring Mr. Membreno'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. Membreno's ability to pay; (3) if bond is granted, enjoin Respondents from invoking the autostay provision and/or delaying Mr. Membreno'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. Membreno's custody due to DHS' alleged failure to conduct an initial custody determination.

Also in the alternative, Mr. Membreno requests this Court order Respondents to bring Mr. Membreno 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. Membreno'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. Membreno'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. Membreno's custody due to DHS' alleged failure to conduct an initial custody determination.

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

Dated: March 20, 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 oppose this motion.

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CERTIFICATE OF SERVICE

I, Daniel Herrera hereby certify that on March 20, 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 March 24, 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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