

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

OSCAR MEDINA-HERRERA,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No. 5:25-cv-1203-J

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

Petitioner, Oscar Medina-Herrera, by and through undersigned counsel, files this emergency motion for a Temporary Restraining Order ("TRO") and/or a Preliminary Injunction. Petitioner seeks an immediate order compelling Respondents to release him from the custody of U.S. Immigration and Customs Enforcement ("ICE"). Furthermore, Mr. Medina-Herrera who was originally detained by ICE in Texas on July 16, 2025 is now detained by ICE at the Cimarron Correctional Facility in Cushing, Oklahoma. He is and has been separated from his family and deprived of the bond hearing the Immigration & Nationality Act, U.S. constitution, and decades of agency practice, leave no doubt he is entitled to.

Mr. Medina-Herrera, however, has not been and will not be provided with the bond hearing required by 8 U.S.C. § 1226 as DHS in conjunction with Executive Office of

Immigration Review (EOIR)¹ (collectively “the government”) recently announced they would be following a new novel interpretation of 8 U.S.C. § 1225(b)(2)(A). Specifically, the government’s new novel interpretation subjects every noncitizen who entered the U.S. without inspection to mandatory detention without the statutorily required bond hearing before a neutral IJ. As a result, Mr. Medina-Herrera is currently being unlawfully detained by ICE.

In recent weeks, district courts across the Country, including in U.S. District Courts located within the Tenth Circuit as well as in nearly every other circuit,² have been rejecting the government’s novel (unsupported) interpretation of the § 1225(b)(2)(A), granting the habeas petitions of individuals similarly situated to Mr. Medina-Herrera, and ordering ICE to either immediately release the petitioner or promptly provide a bond hearing before a neutral IJ.³ Mr. Medina-Herrera respectfully requests that this Court join

¹ The term EOIR or immigration courts are used interchangeably throughout this motion to refer to the agency vested with the responsibility of presiding over bond hearings, removal hearings, and appeals under the INA.

² This includes district courts located within the Fifth Circuit’s jurisdiction. *See Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-cv-01193, 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025). Anecdotally, many immigration and defense attorneys often quip that if courts in the Fifth Circuit reject the government’s claims in such cases then the reasoning and holding of those cases should be given extra-persuasive value.

³ *See Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Giron*

the rapidly growing list of courts finding such detention unlawful and expeditiously ordering the government to remedy it.

Reyes v. Lyons, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, No. 1:25-CV-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero*, No. CV 25-11631-BEM, 2025 WL 2403827, at *8 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, No. 1:25-CV-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Choglio Chafra v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Chiliquinga Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Jabara Oliveros v. Kaiser*, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); *Castellanos v. Kaiser*, No. 25-CV-07962, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); *Leon Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Aceros v. Kaiser, et al.*, 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Chanaguano Caiza v. Scott*, 25-cv-00500, 2025 WL 2806416, at *3 (D. Me. Oct. 2, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Francisco T. v. Bondi*, — F. Supp. 3d —, 2025 WL 2629839, at *3-4 (D. Minn. 2025); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996, at *5 (D. Mass. Oct. 3, 2025); *Guzman Alfaro v. Wamsley*, No. 2:25-CV-01706-TMC, 2025 WL 2822113, at *3 (W.D. Wash. Oct. 2, 2025); *Inlago Tocagon v. Moniz*, — F. Supp. 3d —, 2025 WL 2778023 (D. Mass. 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025) (agreeing on substantive claim but oddly not ordering any real relief in this decision); *Luna Quispe v. Crawford, et al.*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799, at *6 (E.D. Va. Sept. 29, 2025); *Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Mosqueda v. Noem*, 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (same); *Pablo Sequen v. Kaiser*, No. 25-cv-06487, 2025 WL 2650637, at *7-8 (N.D. Cal. Sept. 16, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *S.D.B.B. v. Johnson et al.*, No. 1:25-CV-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025).

STATEMENT OF FACTS

Petitioner, Mr. Medina-Herrera, a native of Mexico, is a loving father and devoted husband who has been an integral part of his Texas community for over two decades. Indeed, his entire life is here: his wife and three U.S. citizen children, his extended family, his home, and a senior-level career he has built over decades of dedicated service. Simply put, Mr. Medina-Herrera is an individual with exceptionally strong ties to the United States, a profound commitment to his family, a distinguished professional career, and an outstanding moral character. He has been a resident of Sanger, Texas, since 2017, where he lives with his wife of over 15 years and their three U.S. citizen children ages 22, 15, and 14. They are pictured together below:



His children, identify him as their leader, role model, and the sole financial provider for their household, underscoring the immense positive impact he has on their lives and the stability he provides.⁴

Professionally, Mr. Medina-Herrera has demonstrated an exemplary work ethic and has achieved significant success.⁵ He has been employed with the same company for over a decade, with his employer of 27 years having nothing but incredible things to say about him. Mr. Medina-Herrera's character, work ethic, and ability to see the strengths (rather than weaknesses) in the numerous employees he oversees is what led to his progression from an apprentice when he started to his current critical role as Field Operations Manager.⁶ In this capacity, he manages over 100 employees and oversees complex, multi-million dollar projects, and is described by the company's President, Vice President, and Controller as an indispensable leader whose integrity and expertise have been integral to the company's success. He is a licensed Plumber in the State of Texas, a credential that reflects his skill and dedication to his trade. His financial documents further affirm his stability and contributions, showing consistent, substantial income through joint tax returns filed annually from 2020 through 2024 and a significant, fully vested 401(k) retirement account.⁷

⁴ (See Ex. 4, pp. 205 – 227.)

⁵ (*Id.* at pp. 59-61.)

⁶ (*Id.*)

⁷ (See Ex. 4, pp. 105 – 191.)

Numerous individuals (family, friends, and professional colleagues) who wrote character letters on his behalf paint a remarkably consistent portrait of Mr. Medina-Herrera as a man of great integrity, kindness, and generosity.⁸ He is repeatedly described as a dedicated and loving father and husband, a trustworthy and supportive friend, and a respected mentor who has guided numerous colleagues in their own careers. Friends and family attest to his willingness to help anyone in need, his positive attitude, and his role as a pillar of support within his community. His employer, Lorne Neu, describes his life as a "testament to his work ethic and character," while coworkers credit him directly for their professional advancement and success.⁹

Mr. Medina-Herrera is a man of strong moral fiber, deeply committed to his family, and a valued asset to both his workplace and his community.

On December 27, 2018, Mr. Medina-Herrera was encountered by ICE who detained him for removal proceedings based on a warrant issued under 8 U.S.C. § 1226(a).¹⁰ On January 15, 2019, an Immigration Judge correctly determined that the Court possessed jurisdiction over Mr. Medina-Herrera's custody and granted him a bond, which he posted.¹¹ No one ever suggested Mr. Medina-Herrera was subject to mandatory detention or that the Immigration Judge did not have jurisdiction to grant a bond. This, of course, is the result of everyone—ICE, EOIR, Article III courts, and immigration attorneys—all recognizing

⁸ (See Ex. 4, pp. 59-61, 205 – 227.)

⁹ (*Id.*)

¹⁰ (Ex. 2 – I-213 Record of Deportable Alien and NTA (Dated 12/27/2018).)

¹¹ (Ex. 4 - Screenshot Showing IJ Granted Bond on 1.15.2019.)

the undeniable fact that entering the country without inspection is not, by itself, a bar to an IJ's jurisdiction to hold a bond hearing and grant a bond under § 1226 which was last amended (at that time in 2019) in 1996 when IRRIRA was enacted.

After being released on bond, Mr. Medina-Herrera appeared for every one of his immigration hearings. These hearings culminated in a final hearing on an application for cancellation of removal. Following the submission of extensive evidence and taking testimony, the hearing reached a point at which it had to be continued to allow for the presentation of the rest of Mr. Medina-Herrera's witnesses. At that point, however, DHS offered (as it had before the hearing began) to agree to dismiss his removal proceedings as it was of the opinion that Mr. Medina-Herrera had the good moral character and equities for his application to be granted but did not believe it could agree that he had met the extremely high hardship standard—a necessary predicate for the relief he sought. Because Mr. Medina-Herrera's exemplary life in the U.S. for more than two decades did not make him a priority for the agency, they sought his agreement to dismiss the case both before the hearing and at the end of testimony that day.¹² The IJ presiding over his prior removal proceedings ultimately agreed with DHS' conclusion and stated during the final hearing of those proceedings that he was confident that Mr. Medina-Herrera's sole blemish (a DUI arrest in 2018 that preceded ICE's detention of him) was just that—an outlier.

¹² (Ex. 3 – IJ Order Dismissing Proceedings on 8/14/2024.)

Ultimately, Mr. Medina-Herrera accepted the offer of dismissal. Thereafter, his proceedings were dismissed and both parties waived appeal.¹³

Seven years later, Mr. Medina-Herrera and his wife were driving home from a gathering of their family and friends when they pulled off the highway and parked on the shoulder of the road.¹⁴ Unbeknownst to Mr. Medina-Herrera and his wife (who was the driver of the vehicle), there had been an accident a little further down the highway in which one of the drivers had abandoned the scene (and the vehicle he/she was driving). This was brought to their attention by a police officer who approached them and their vehicle on foot. Though no one ever alleged Mr. Medina-Herrera was involved in the accident (as he was not) or that he had been driving their vehicle (again, as he was not), he had a few drinks and was technically publicly intoxicated. Mr. Medina-Herrera was arrested at that time. A few days later, Mr. Medina-Herrera was transferred to ICE custody where he has remained without being provided the bond hearing he is statutorily entitled to under the INA.

Subsequently ICE detained him for removal proceedings and claimed they had issued a new NTA charging him is inadmissible under 8 U.S.C. § 1182(a)(6)(A)—just like the one issued in 2018.¹⁵ After being transferred to ICE custody in Texas, he was moved

¹³ (*Id.*)

¹⁴ They pulled off the road at after 10 pm, when it was dark and they were in a fairly isolated area which allowed Mr. Medina the opportunity to privately assist with an overfilled kidney issue that had become more urgent during their quasi-long drive home.

¹⁵ In 2024, Mr. Medina's removal proceedings were dismissed. Accordingly, a new NTA was issued when he was placed in removal proceedings in July 2025.

hundreds of miles away to the Cimmaron Detention Center located in Cushing, Oklahoma.¹⁶

Thereafter, a motion for a bond hearing was filed with the immigration court having jurisdiction over detainees being held at the Cimmaron Detention Center.¹⁷ Prior to the bond hearing, extensive evidence was submitted, as well as a prehearing statement, which demonstrated Mr. Medina-Herrera was neither a flight risk nor a danger to the community. These conclusions were supported by the prior removal proceedings which were ultimately dismissed as a matter of prosecutorial discretion as discussed above. Given the evidence and the conclusions reached by both ICE and the IJ less than a year earlier, the bond hearing he requested in 2025, just like the one he had in 2018, should have been fairly simple and straightforward. ICE certainly could have tried to contradict its position when the prior removal proceedings were dismissed or sought to claim being public intoxicated (though only encountered as a result of bad luck) changed the danger analysis somehow. This, after all, is precisely what bond hearings before a neutral adjudicator are for: settling any disagreements between the parties about flight risk and danger. That is, of course, what led to Mr. Medina-Herrera being granted a bond in January 2019. This is not, however, what happened.

At a bond hearing on August 1, 2025, the Immigration Judge refused to hold a bond hearing. Instead, the IJ curtly cut off every attempt Mr. Medina-Herrera's counsel made to

¹⁶ (Ex. 1 – ICE Detainee Locator Showing Petitioner in Custody within this Court's Jurisdiction.)

¹⁷ (Ex. 4 – Entire eROP for Bond Proceedings in 2025.)

address any jurisdictional concerns so a bond hearing could be held and bond could be set as the evidence left no doubt he was neither a flight nor safety risk. At one point, the IJ explicitly told Mr. Medina-Herrera's counsel she didn't want to hear anything about statutory construction, the Laken Riley Act, because those things had nothing to do with her conclusion that she did not have jurisdiction.

Nothing about the relevant facts or law related to bond jurisdiction had changed between January 2019 when he was granted bond by an IJ after a bond hearing pursuant to 8 U.S.C. § 1226. Nonetheless, the IJ presiding over the hearing on August 1, 2025, acted as though it should have been obvious that she did not have jurisdiction based on nothing more than the fact that Mr. Medina-Herrera last entered without inspection in 2003 and the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018)—which was issued nearly a year before an IJ granted Mr. Medina-Herrera a bond after a hearing pursuant to § 1226.

After refusing to let Mr. Medina-Herrera present any kind of arguments about statutory construction, (calling them irrelevant), the IJ's own decision inserted on to a standard form claimed to be based on the statute's meaning/language (also known as statutory construction) and *Jennings*.

On August 3, 2025, Mr. Medina-Herrera filed a motion to reconsider the bond decision. The motion to reconsider made nearly all the arguments/points that have been relied on by the constantly growing list of U.S. district courts who have already granted habeas petitions on this exact issue. Nonetheless, on August 13, 2015, the IJ denied the

motion to reconsider stating, (in the first paragraph of a decision totaling two substantive paragraphs), that:

The Court has reviewed the Respondent's argument regarding the Laken-Riley act, and understands the apparent discrepancy between INA sec. 235(b)(2) and those subject to mandatory detention under INA sec. 236(c)(1)(E)(i), (ii). However, the United States Supreme Court clearly held in *Jennings v. Rodriguez*, that “applicants for admission fall into one of two categories, those covered by § [235](b)(1) and those covered by § [235](b)(2)” 583 U.S. at 287. The Supreme Court further stated that, “[r]ead most naturally, §§ [235](b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.”¹⁸

Any appeal of this decision to the BIA would have been futile for a variety of reasons. This was made abundantly clear on September 5, 2025, when the BIA issued a published decision in *Matter of Hurtado* which acted as a rubberstamp to the new novel interpretation ICE Director Lyons had announced ICE would now be taking in conjunction with EOIR.

In addition to Mr. Medina-Herrera’s detention being unlawful and unnecessarily prolonged as a result of the government’s incorrect new novel interpretation of § 1225(b)(2)(A), it was further delayed by the fact that DHS and EOIR failed to properly docket the NTA in his removal proceedings. Contrary to DHS’ claims on August 1, 2025, indicating it had properly filed the NTA with EOIR that day, it took several phone calls and emails before a NTA was finally filed on ECAS (EOIR’s online case filing system). That NTA was dated the same date as it was filed: September 18, 2025.¹⁹

¹⁸ (Ex. 5 at pp. 1-2.)

¹⁹ (Ex. 6 – NTA Dated 9.18.25.)

In other words, Mr. Medina-Herrera has not only been subject to unlawful detention without the bond hearing he is entitled to under the INA and U.S. Constitution, that detention was unnecessarily prolonged by approximately 50-days solely due to the government's failure to actually initiate the removal proceedings through the proper filing of a NTA.

Mr. Medina-Herrera now seeks this court's urgent intervention to prevent this unlawful detention from continuing any longer.

LEGAL STANDARD

The purpose of a TRO is to preserve the status quo and prevent irreparable harm until the court makes a final decision on injunctive relief.²⁰ To obtain a TRO, an applicant must establish four elements: (1) substantial likelihood of success on the merits; (2) substantial threat of irreparable harm; (3) the threatened injury outweighs any harm the order might cause the defendant; and (4) the injunction will not disserve the public interest.²¹

I. Mr. Medina-Herrera Is Likely to Succeed on the Merits of his Claims.

A. Mr. Medina-Herrera Is Likely to Succeed on the Merits of His Claim that His Detention Without a Bond Hearing Based on Nothing More than Being EWI is Unconstitutional and Unlawful.

²⁰ *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

²¹ *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see *Enrique Bernat F, S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000).

Mr. Medina-Herrera is substantially likely to succeed on the merits of his claims because his detention is unlawful under both the INA and the Due Process Clause of the Fifth Amendment. Respondents' new, radical interpretation of the INA—which subjects all noncitizens who entered without inspection (“EWI”) to mandatory detention—reverses nearly three decades of consistent agency practice, defies multiple canons of statutory construction, and violates the Constitution. This novel theory, recently rubber-stamped by the Board of Immigration Appeals (“BIA”) in *Matter of Hurtado*, 29 I & N Dec. 216 (BIA Sept. 5, 2025), is a thinly veiled attempt to achieve through executive fiat what Congress has not authorized: the categorical denial of bond hearings to a class of noncitizens long understood to be eligible for them. Indeed, there is no better evidence of a likelihood of success on the merits than more than forty other federal district court decisions reaching the same conclusion---with many of them noting the government's inability to point to a single case on this issue that went its way.²² These courts have reached this conclusion because the government's position is legally indefensible.

i. His Detention Violates Due Process.

Noncitizens are entitled to due process of the law under the Fifth Amendment.²³ To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Pursuant to *Mathews*, courts weight the following factors:

²² See string citation listing district court decision reaching these conclusion at fn. 3, *supra*.

²³ *Demore v. Kim*, 538 U.S. 510, 523 (2003).

- (1) the private interest that will be affected by the official action;
- (2) the risk of an 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.²⁴

Mr. Medina-Herrera addresses the *Mathews* factors in turn.

Private interest. It is undisputed Mr. Medina-Herrera has a significant private interest in being free from detention. “The interest in being free from physical detention” is “the most elemental of liberty interests.”²⁵ Moreover, when assessing the private interest, courts consider the detainee’s conditions of confinement, specifically, “whether a detainee is held in conditions indistinguishable from criminal incarceration.”²⁶

Mr. Medina-Herrera has not only been held in ICE detention without a bond hearing or the possibility of obtaining one for weeks, he was also moved 100s of miles into another state—all while in ICE’s custody. As in *Günaydin*, “he is experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, . . . lack of privacy, and, most fundamentally, the lack of freedom of movement.”²⁷ The

²⁴ *Mathews*, 424 U.S. at 335.

²⁵ *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

²⁶ *Günaydin v. Trump*, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154, at *7 (D. Minn. May 21, 2025) (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)).

²⁷ *Id.*

first *Matthews* factor supports Mr. Medina-Herrera 's claim of a Fifth Amendment violation.

Risk of erroneous deprivation. Under this factor, courts must “assess whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.”²⁸ The government’s new position claiming any noncitizen present in the U.S. without having been inspected by an immigration officer (colloquially referred to as “EWI”) is subject to mandatory detention without a bond hearing is the sole reason he has been and continues to be unlawfully detained. Notably, the government’s new position contradicts nearly three decades of consistent agency action holding bond hearings and setting bond for noncitizens who are EWI. Significantly, a bond hearing before a neutral adjudicator in accordance with § 1226(a), like the ones that took place for decades prior to July 2025, is exactly the place for any claimed interest the government has in detaining Petitioner (e.g. assuring appearance at hearings and public safety) to be heard and ultimately ruled on by a neutral adjudicator. This *Matthews* factor weighs in favor of Mr. Medina-Herrera , too.

Respondents’ competing interests. Under this factor, the court weighs the private interests at stake and the risk of erroneous deprivation of those interests against Respondents’ interests.²⁹ Petitioner does not dispute that the government and the public have a strong interest in the enforcement of the immigration laws. Ironically, it is Petitioner

²⁸ *Id.* at *8.

²⁹ *Matthews*, 424 U.S. at 335.

who is asking the Court to enforce such laws as the currently exist; meanwhile, the government is asking everyone to ignore multiple provisions of the INA. Mr. Medina-Herrera is not a flight risk nor a danger to the community. Nor is Mr. Medina-Herrera described in any of the provisions of 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19 which would subject him to mandatory detention without the right to a bond hearing before an IJ. Accordingly, the government's interest in upholding the Constitution and immigration laws is fulfilled through the relief sought by Mr. Medina-Herrera's habeas petition.

Because all three *Matthews* factors favor Mr. Medina-Herrera's position, this Court should determine that Mr. Medina-Herrera is likely to succeed in demonstrating that his detention without a bond hearing based on nothing more than being EWI contravenes his due process rights under the Fifth Amendment.³⁰

ii. His Detention Violates the Relevant Statutes.

The government's detention of Petitioner without a bond hearing, based on its new interpretation of 8 U.S.C. 1225(b)(2)(A), is contrary to the INA's plain text, its clear structural divisions, and its recent legislative amendments. Indeed, as several district courts have already pointed out:

the government's "interpretation of the statute (1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice."³¹

³⁰ See *Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025).

³¹ *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025); see also, *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, — F.Supp.3d —, —, 2025 WL 2084238, at *9 (D. Mass.

Furthermore, the statutory scheme, read as a coherent whole, demonstrates that Petitioner's detention is governed by the discretionary framework of 8 U.S.C. 1226, which mandates the very bond hearing he has been denied.

First, the plain language of 8 U.S.C. § 1225(b)(2)(A) does not apply to noncitizens like Petitioner who were apprehended in the interior of the United States years after their entry. As a growing number of courts have found, the statute mandates detention only for an individual who is (1) an "applicant for admission," (2) is "*seeking admission*," and (3) is determined by an examining officer to be "not clearly and beyond a doubt entitled to be admitted."³² The government's new interpretation, formalized and perceived as binding on IJs by the BIA's decision in *Matter of Hurtado* issued on September 5, 2025, conveniently ignores the second, critical element: that the person must be actively "seeking admission." A noncitizen who entered years ago and has since resided in the United States is not, by any plain sense meaning of the term, "seeking admission" when apprehended by interior

July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, — F.Supp.3d —, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); Doc. 11, *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, — F.Supp.3d —, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, — F.Supp.3d —, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025).

³² 8 U.S.C. § 1225(b)(2)(A); *see also* *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (affirming these "several conditions must be met" for a noncitizen to be subject to mandatory detention under § 1225(b)(2)(A)).

enforcement officers. The statute’s use of the present progressive tense—“seeking”—unambiguously limits its application to the context of an arrival at a port of entry or the border, not to an arrest occurring long after the act of entry is complete.³³

By reading the phrase “seeking admission” out of the statute, the government violates the foundational interpretive canon against surplusage, which requires that courts “give effect, if possible, to every clause and word of a statute.”³⁴ This textual distinction reflects the INA’s broader structure, which carefully distinguishes between two different contexts of enforcement. Section 1225, titled “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearings,” governs the process of inspection and admission at the border.³⁵ In contrast, 8 U.S.C. § 1226, titled “Apprehension and detention of aliens,” governs the arrest and detention of noncitizens already present within the United States.³⁶ Petitioner, having been arrested in the interior

³³ See *Martinez v. Hyde*, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); accord *Lopez Benitez v. Francis*, 2025 WL 2371588, at *6–7 (S.D.N.Y. Aug. 13, 2025). See also *United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”); *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing “is arriving” in 8 U.S.C. Sec. 1225 (1)(A)(i) and observing that “[t]he use of the present progressive, like use of the present participle, denotes an ongoing process”).

³⁴ *Corley v. United States*, 556 U.S. 303, 314 (U.S. 2009).

³⁵ See *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (recognizing that “U.S. immigration law authorizes the Government to detain certain aliens *seeking admission into the country* under §§ 1225(b)(1) and (b)(2) ... [and] to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)”) (emphasis added).

³⁶ *Id.* see also *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025) (“There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for . . . years.”).

decades after her entry, falls squarely within the purview of § 1226, and therefore, his detention is subject to the discretionary bond provisions of this statute.

Second, as numerous courts have repeatedly recognized in recent weeks, the government’s new interpretation of the detention provisions renders the recently enacted Laken Riley Act (“LRA”) entirely superfluous and devoid of any meaning whatsoever.³⁷ In January 2025, Congress passed the LRA for the purpose of making noncitizens who are present in the U.S. without being admitted or inspected by an Immigration Office.³⁸ The LRA specifically targets for mandatory detention a narrow class of noncitizens who meet two distinct criteria: (1) a *status* requirement (being inadmissible as EWI, and thus an “applicant for admission” under), and (2) a *conduct* requirement (having been charged with, arrested for, or convicted of specific offenses like burglary or theft).³⁹ The very structure of this amendment is dispositive. By creating a new category of mandatory detention for EWI noncitizens *with* certain criminal histories, Congress legislated against the clear backdrop of the existing legal landscape—a landscape where EWI status *alone* was insufficient to trigger mandatory detention.

If the government’s new theory were correct, and all EWI noncitizens were already subject to mandatory detention under § 1225(b)(2)(A), then the LRA would accomplish

³⁷ See e.g., *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *6–7 (E.D. Mich. Sept. 9, 2025) (“The BIA also argued that § 1225(b)(2)(A) does not render superfluous the Laken Riley Act. . . But. . . considering both §§ 1225(b)(2)(A) and 1226(c)(1)(E) mandate detention for inadmissible citizens, whether one includes additional conditions for such detention does not alter the redundant impact.”).

³⁸ Pub. L. No. 119-1, 139 Stat. 3 (2025).

³⁹ 8 U.S.C. § 1226(c)(1)(E).

nothing. It would be a meaningless legislative act. The canon against surplusage forbids such a conclusion. The LRA is powerful evidence that Congress understood and implicitly ratified the decades-long practice of affording bond hearings to EWI noncitizens who lacked the disqualifying criminal histories enumerated in 1226(c) or were among those described in 8 C.F.R. § 1003.19(h) such as arriving aliens (a discrete subset of “applicants for admission”).

The Executive Branch’s subsequent policy reversal is not merely a novel interpretation; it is an attempt to rewrite the statute and override a recent, specific legislative judgment, raising profound separation of powers concerns. Moreover, the BIA’s new interpretation, makes a liar out of the president who touted the LRA as a necessary piece of legislation that would “save countless innocent American lives” when he signed into law.⁴⁰ After all, if the LRA did absolutely nothing because, as DHS and EOIR suddenly claim, every noncitizen covered by the LRA’s amendments was already subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

Third, the INA’s implementing regulations and broader statutory framework confirm that Immigration Judges (“IJs”) retain jurisdiction to grant bond to noncitizens in Petitioner’s circumstances.⁴¹ Among other things, the regulations create a specific

⁴⁰ <https://www.npr.org/2025/01/29/g-s1-45275/trump-laken-riley-act>

⁴¹ *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3–6 (D. Nev. Sept. 17, 2025) (“The EOIR’s regulations drafted following the enactment of the IIRIRA explained this distinction.”) (citing Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection).

jurisdictional bar preventing IJs from conducting bond hearings for “arriving aliens” under 8 C.F.R. 1003.19(h)(2)(i)(B). An “arriving alien” is defined as an “applicant for admission coming or attempting to come into the United States at a port-of-entry.”⁴² By explicitly carving out this specific subset of “applicants for admission,” the regulations create a powerful negative inference: IJs *do* have jurisdiction over “applicants for admission” who are not “arriving aliens,” a category that includes Petitioner. Again, if all “applicants for admission” were already subject to mandatory detention under § 1225(b)(2)(A), this carefully drawn regulatory distinction would be entirely pointless.

Furthermore, the INA’s distinct grants of arrest authority reinforce this conclusion. Sections 1225 and 1357(a)(2) authorize warrantless arrests at or near the border for those “entering or attempting to enter” the U.S. In contrast, both § 1226(a) and 1357(a) provide the authority for warrant-based arrests for interior enforcement and arrests of noncitizens already present in the U.S.

Here, Petitioner was arrested in the interior far from the land border and years after his entry. Accordingly, his arrest was governed by the authority provided in §1226(a). Likewise, his continued detention is governed by the same statute that authorized his arrest: § 1226 which entitles him to a bond hearing before a neutral IJ. Accordingly, Respondents’ refusal to provide this statutorily required bond hearing based on its new (unsupported) interpretation of § 1225(b)(2)(A).

⁴² 8 C.F.R. § 1.2.

Here, Mr. Hurculano is likely to succeed on his claim that his detention without a bond hearing violates the INA for all the reasons discussed above. The likelihood of success tips even further in his favor given that it is his position—not the government’s—that numerous district courts have agreed with when granting habeas petitions in recent weeks on this exact issue—including courts within the Fifth Circuit.⁴³

II. Mr. Medina-Herrera Faces Immediate and Irreparable Harm.

A movant “must show a real and immediate threat of future or continuing injury apart from any past injury.”⁴⁴ Continued unlawful detention is, by its very nature, an irreparable injury. The Supreme Court has affirmed that “[f]reedom from imprisonment . . . lies at the heart of the liberty” protected by the Due Process Clause.⁴⁵ Each day Mr. Medina-Herrera remains in custody, he is irreparably harmed by the loss of his fundamental liberty—a cruel irony for a young man who came to the U.S. after being orphaned and subsequently subjected to abuse by those purporting to care for him after the tragic loss of his parents.

The harm is not merely abstract. Mr. Medina-Herrera has already been subjected to the being transported across the country in ICE custody—and all the humiliating and

⁴³ See e.g., *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-cv-01193, 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Chafila v. Scott*, et. al., No. 2:25-CV-00437-SDN, 2025 WL 2688541, at *5–6 (D. Me. Sept. 21, 2025) (citing *Salcedo Aceros v. Kaiser*, No. 25-cv-06924, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-00326, ECF No. 16 (D.N.H. Sept. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613, 2025 WL 2084238 (D. Mass. July 24, 2025).

⁴⁴ *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014).

⁴⁵ *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

degrading things that go along with being transported while in custody (cuffs, chains, and repeated strip searches) Absent relief from this Court, Mr. Medina-Herrera will remain detained and potentially moved again, in what is becoming an increasingly long removal proceeding process, and as a result, denied his liberty, removed from his livelihood and freedom, and removed from what had previously been a community where he belongs.

III. The Balance of Equities and Public Interest Weighs in Mr. Medina-Herrera's Favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—“merge when the Government is the opposing party.”⁴⁶ Here, the balance of hardships weighs overwhelmingly in Mr. Medina-Herrera's favor. The injury to Mr. Medina-Herrera —unconstitutional detention and risk to his well-being—is severe and immediate. Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law.⁴⁷

Conversely, the harm to Respondents is nonexistent. Mr. Medina-Herrera is not among those Congress proscribed for mandatory detention. Nor is Mr. Medina-Herrera a danger to the community or a flight risk. Moreover, to the extent the government disagrees with any of these statements, it has the same recourse it has had for decades: making those arguments to a neutral adjudicator during a bond hearing pursuant to § 1226. Surely, Respondents cannot claim any, much less substantial, harm would be caused by affording

⁴⁶ *Nken v. Holder*, 556 U.S. 418, 435 (2009).

⁴⁷ *Id.* at 436 (describing public interest in preventing noncitizens “from being wrongfully removed, particularly to countries where they are likely to face substantial harm”); *see also Rosa v. McAleenan*, 583 F. Supp. 3d 840 (S.D. Tex. 2019).

Mr. Medina-Herrera a bond hearing, just as it has to similarly situation noncitizens for decades in accordance with the INA's statutory scheme.⁴⁸ Furthermore, the public interest is served by preserving "life, liberty, and happiness" and by preventing the waste of taxpayer resources on unlawful and unnecessary detention.

IV. Mr. Medina-Herrera Seeks the Same Injunctive Relief Being Granted to Nearly Every Similarly Situated Habeas Petitioner.

Mr. Medina-Herrera seeks injunctive relief to maintain the status quo by requiring ICE to either immediately release him or promptly provide him with a bond hearing before a neutral IJ. As stated above (repeatedly), the list of district courts that have recently concluded the government's new position is plainly incorrect is a long one that is growing by the day.

While courts have been fairly unanimous in this finding and granting relief, the specific remedy has varied slightly.⁴⁹ For example, "[s]ome courts have determined that the appropriate relief for an immigration detainee held in violation of due process is the petitioner's immediate release from custody."⁵⁰ Alternatively, "[m]any courts in recent days order[ed] a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner's continued detention by clear and convincing evidence."⁵¹

⁴⁸ See *Martinez*, 2025 WL 2598379, at *5.

⁴⁹ See *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025) (discussing the various forms of relief ordered by courts granting habeas relief in similar cases).

⁵⁰ *Id.* (citing *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025)).

⁵¹ *Id.* (citing *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo*, No. 24-cv-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); *Espinoza*, 2025 WL 2581185, at *14; and

These remedies preserve rather than alter the status quo.⁵² The status quo ante litem is “the last uncontested status which preceded the pending controversy.” For nearly thirty years, bond hearings before a neutral IJ were the status quo for noncitizens who were EWI and not described in § 1226(c) or 8 C.F.R. § 1003.19(h). This was the status quo, of course, because it is precisely what is required by the INA’s statutory scheme. Injunctive relief is, therefore, appropriate in Mr. Medina-Herrera’s case.

CONCLUSION

For the foregoing reasons, Petitioner Mr. Medina-Herrera respectfully requests that the Court immediately grant his petition and this motion and issue a Temporary Restraining Order and/or Preliminary Injunction ordering his immediate release from ICE custody, or in the alternative a prompt bond hearing at which the government bears the burden of demonstrating flight or safety risk by clear and convincing evidence.

RESPECTFULLY SUBMITTED,

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⁵² *Nguyen v. Scott*, 2025 WL 2419288, at *10 (W.D. Wa. Aug. 21, 2025) (citing *Phong Phan v. Moises Beccerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at *6 (E.D. Cal. July 16, 2025); *Pinchi v. Noem*, No. 25-cv-05632-RMI-RML, 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2024) (finding the “moment prior to the Petitioner’s likely illegal detention” was the status quo).