IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

ELIUD LUVIANO PANIAGUA, PETITIONER, v. KRISTI NOEM, et al., RESPONDENTS.	Civil Case No. 5:25-cv-188

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

Petitioner, Eliud Luviano Paniagua, 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"). Eliud Luviano Paniagua who was originally detained by ICE on September 14, 2025, in the DFW area and is now detained at the ICE Laredo Detention Center. Separated from his family by many miles 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. Luviano , 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

[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.

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. Luviano is currently being unlawfully detained by ICE.

In recent weeks, district courts across the Country, (including in the Southern District of Texas and the Western District of Texas), 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. Luviano, and ordering ICE to either immediately release the petitioner or promptly provide a bond hearing before a neutral IJ.[2] Mr. Luviano respectfully requests that this Court join the rapidly growing list of courts finding such detention unlawful and expeditiously ordering the government to remedy it.

STATEMENT OF FACTS

Petitetitioner, Mr. Luviano, is a native and citizen of Mexico who has resided in the United States for the majority of the last three decades. Indeed, he has lived in the United

[2] *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); *Chafla 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); *Gomes*, 2025 WL 1869299; *Lopez Benitez v. Francis*, No. 25 CIV. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *R&R adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256 (W.D. Wash. 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Francisco T. v. Bondi*, No. 25-CV-03219, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Maldonado v. Olson*, No. 25-CV-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); and *Diaz Diaz v. Mattivelo*, No. 1:25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025).

States since his last entered the Country without inspection in 1999 and has maintained continuous physical presence in the United States since that time.

Mr. Luviano has extensive and significant family ties within the United States. He is married to Rosa Luviano, a Lawful Permanent Resident, and is the father of five United States citizen children, aged 24, 20, 16, 9, and 5. His mother is also a Lawful Permanent Resident. The family resides in the Dallas, Texas area, where they are active members of their community, including their local parish, St. James Catholic Church, since 2004.

Mr. Luviano has a long and consistent history of employment since his arrival. With the exception of a single DWI conviction, Mr. Luviano lacks any criminal history.

Mr. Luviano is the beneficiary of an approved Form I-130, Petition for Alien Relative, which was filed by his United States citizen sister, Angelica Frias on April 30, 2001. This petition was approved and established a priority date of April 30, 2001.

While this petition makes him eligible for protection under 8 U.S.C. § 1255(i), an immigrant visa is not yet available to him under the family-sponsored preference categories due to visa backlogs. That bears repeating—more than 24 years after an I-130 Petition was filed for him by his U.S. citizen sister he still has not gotten to the front of the "line." Moreover, it is important to point out that eligibility to adjust status under 8 U.S.C. § 1255(i) does not just contemplate continued physical presence in the United States while one waits to get to the front of the line—Congress mandated an alien's presence on December 21, 2000, to be eligible for adjustment under 1255(i).[3]

[3] *See* 8 U.S.C. § 1255(i).

Remarkably, Mr. Luviano has been in "line" for his turn to adjust status under 8 U.S.C. § 1255(i) since his U.S. citizen sister placed in him in it by filing an I-130 petition for him on April 30, 2001. And, as of the most recent Visa Bulletin, there still is not an available visa under for Mr. Luviano whose petition falls into the F4 category in the screenshot of the October 2025 Visa Bulletin seen below:

A. FINAL ACTION DATES FOR FAMILY-SPONSORED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is earlier than the final action date listed below.)

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	08NOV16	08NOV16	08NOV16	22NOV05	22JAN13
F2A	01FEB24	01FEB24	01FEB24	01FEB23	01FEB24
F2B	22NOV16	22NOV16	22NOV16	15DEC07	01OCT12
F3	08SEP11	08SEP11	08SEP11	15APR01	22SEP04
F4	08JAN08	08JAN08	01NOV06	08APR01	22MAR06

A second I-130 petition was also filed on his behalf by his U.S. citizen daughter, Daniela Luviano, on August 11, 2025. Together, these petitions will allow him to adjust his status in the United States.

On September 14, 2025, ICE detained Mr. Luviano and placed him in removal proceedings by filing a Notice to Appear, (NTA), charging him (among other things) as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) based on entering without inspection (EWI). Based on the government's recent novel (incorrect) interpretation of 8 U.S.C. § 1225(b)(2)(A), Mr. Luviano is being detained without being provided with the bond

hearing he is entitled to under the INA & U.S. Constitution. He will continue to be detained without being provided with the required hearing without this Court's urgent intervention.

Because Mr. Luvianois being detained in ICE custody without being afforded the bond hearing required under the law, he seeks this Court's urgent intervention.

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.[4] 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.[5]

I. Mr. LuvianoIs Likely to Succeed on the Merits of his Claims.

A. Mr. LuvianoIs 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.

Mr. Luviano 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

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

[5] *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).

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. As numerous federal district courts have already concluded, this position is legally indefensible.

i. His Detention Violates Due Process.

Noncitizens are entitled to due process of the law under the Fifth Amendment.[6] To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Matthews v. Eldridge*, 424 U.S. 319 (1976). Pursuant to *Matthews*, courts weight the following factors:

> (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.[7]

Mr. Luviano addresses the *Matthews* factors in turn.

[6] *Demore v. Kim*, 538 U.S. 510, 523 (2003).

[7] *Matthews*, 424 U.S. at 335.

Private interest. It is undisputed Mr. Luviano 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."[8] Moreover, when assessing the private interest, courts consider the detainee's conditions of confinement, namely, "whether a detainee is held in conditions indistinguishable from criminal incarceration."[9]

Mr. Luviano has not only been held in ICE detention without a bond hearing or the possibility of obtaining one for weeks, he is also being subjected to the emotional and physical turmoil that comes with being deprived of one's liberty and separated from his family.. 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."[10] The first *Matthews* factor supports Mr. Luviano'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."[11] 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

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[8] *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

[9] *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)).

[10] *Id.*

[11] *Id.* at *8.

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. Luviano, 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.[12] 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 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. Luviano is not a flight risk nor a danger to the community. Nor is Mr. Luviano 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. Luviano's habeas petition.

[12] *Matthews*, 424 U.S. at 335.

Because all three *Matthews* factors favor Mr. Luviano's position, this Court should determine that Mr. Luviano 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.[13]

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.[14]

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

[14] *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. 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).

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."[15] 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 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.[16]

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[15] 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)).

[16] *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").

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."[17] 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.[18] 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.[19] Petitioner, having been arrested in the interior 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.[20]

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[17] *Corley v. United States*, 556 U.S. 303, 314 (U.S. 2009).

[18] *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).

[19] *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.").

[20] *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.").

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.[21] 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).[22] 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 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").

[21] Pub. L. No.119-1, 139 Stat. 3 (2025).

[22] 8 U.S.C. § 1226(c)(1)(E).

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.[23] Afterall, 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.[24] Among other things, the regulations create a specific 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."[25] 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

[23] https://www.npr.org/2025/01/29/g-s1-45275/trump-laken-riley-act

[24] *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).

[25] 8 C.F.R. § 1.2.

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).

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.[26]

[26] *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); *Chafla 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*,

II. Mr. Luviano Faces Immediate and Irreparable Harm.

A movant "must show a real and immediate threat of future or continuing injury apart from any past injury."[27] 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.[28] Each day Mr. Luviano 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. Luviano has already been subjected to the being transported across the country in ICE custody—and all the humiliating and degrading things that go along with being transported while in custody (cuffs, chains, and repeated strip searches) Absent relief from this Court, Mr. Luviano 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. Luviano 's Favor.

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).

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

[28] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party."[29] Here, the balance of hardships weighs overwhelmingly in Mr. Luviano 's favor. The injury to Mr. Luviano —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.[30]

Conversely, the harm to Respondents is nonexistent. Mr. Luviano is not among those Congress proscribed for mandatory detention. Nor is Mr. Luviano 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 Mr. Luviano a bond hearing, just as it has to similarly situation noncitizens for decades in accordance with the INA's statutory scheme.[31] 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. Luviano Seeks the Same Injunctive Relief Being Granted to Nearly Every Similarly Situated Habeas Petitioner.

[29] *Nken v. Holder*, 556 U.S. 418, 435 (2009).

[30] *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).

[31] *See Martinez*, 2025 WL 2598379, at *5.

Mr. Luviano 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.[32] 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."[33] 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."[34] These remedies preserve rather than alter the status quo.[35] 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

[32] *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).

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

[34] *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 *Arostegui-Maldonado v. Baltazar*, —— F. Supp. 3d ——, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025)).

[35] *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).

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. Luviano 's case.

CONCLUSION

For the foregoing reasons, Petitioner Mr. Luviano 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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