

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

RODRIGO VACA GOMEZ,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No. 3:25-cv-560

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

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INTRODUCTION

Petitioner, etitioner, Rodrigo Vaca Gomez, is the father of four U.S. citizen children and was a devoted husband to their mother who was murdered last year. Mr. Gomez Vaca has resided in the United States for about the last 15-years and was granted deferred action based on a U-visa filed back in 2019 which is still pending with USCIS. Mr. Gomez Vaca was a passenger in a vehicle when local police stopped the vehicle due to an alleged traffic violation. When Petitioner was asked for identification, he provided law enforcement with his Employment Authorization Document, lawfully issued by U.S. Citizenship & Immigration Services (USCIS) and still valid. The officers told him this document was insufficient, detained him and transferred him to ICE custody. ICE placed in removal proceedings based on entering without inspection and did not set a bond for him. The harm of this unlawful detention is not just to him, but also to his U.S. citizen children who are now without a father after losing their mother last yea

Mr. Gomez Vaca's detention by ICE, or at least his detention without a bond hearing, violates both the Immigration and Nationality Act and the due process clause of the U.S. constitution. The instant petition is being filed seeking this Court's urgent intervention in the form of an order enjoining ICE from continuing to unlawfully detain him. Indeed, Mr. Gomez Vaca is separated from four U.S. citizen children who lost their mother last year and has been 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. Gomez Vaca, however, has not been and will not be reinstated to liberty on his previous bond, or provided with another bond hearing required by 8 U.S.C. § 1226, as DHS

in conjunction with the 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. Gomez Vaca is currently being unlawfully detained by ICE.

In recent months, district courts across the Country, including in both the Western District of Texas and Southern District of Texas, have been rejecting the government’s novel (unsupported) interpretation of § 1225(b)(2)(A), granting the habeas petitions of individuals similarly situated to Mr. Gomez Vaca, and ordering ICE to either immediately release the petitioner or promptly provide a bond hearing before a neutral IJ.² Mr. Gomez

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 See e.g., *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Giron 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); *Choglio Chafra v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 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); *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); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 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); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 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

Vaca 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 CONCERNING THE NEED FOR PROMPT REVIEW AND
ADJUDICATION**

This Motion is predicated on a petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, a remedy that Congress and the courts have long recognized demands swift judicial review. Indeed, 28 U.S.C. § 2243 mandates an expedited show-cause response precisely because the petition's central claim is an ongoing, unlawful deprivation of liberty. It is axiomatic that the loss of liberty, even for a single day, constitutes profound and irreparable harm. Therefore, the failure to rule on the requested injunction within 14 days is not mere delay; it is a constructive denial of the motion itself. Each day of inaction inflicts the very irreparable injury the petition seeks to prevent, rendering the extraordinary remedy of habeas functionally meaningless and frustrating the "swift" relief that § 2243 requires.

The irreparable harm of Petitioner's unlawful detention is particularly unnecessary when one considers the fact that the government's attempt to mandate the detention of all EWI aliens is a thinly veiled strategy to coerce individuals into abandoning claims for statutory relief, such as Cancellation of Removal, for which they are eligible. This policy disproportionately affects the very aliens who would typically qualify for a bond—those eligible for relief from removal (significantly lowering flight risk and often requiring the

decision); *Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 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).

absence of any convictions that make them a danger or would mandate detention under § 1226(c)(1)(A)). By subjecting aliens to mandatory detention, the government forces these individuals to pursue their applications from within an ICE facility, fundamentally changing the decision-making process.

This new interpretation weaponizes detention as a coercive tool, forcing aliens into an untenable "cost-benefit" analysis. To even schedule an individual hearing for relief, an alien must first demonstrate *prima facie* eligibility to the court. However, they are then forced to weigh the *possibility* of winning their case—which is never guaranteed—against the *certainty* of remaining in detention for months. Faced with the harsh realities of confinement (such as strip searches and a total loss of liberty) for what may be a 50/50 chance of success, many individuals who are otherwise eligible for relief provided by Congress are pressured to "throw in the towel" and accept removal.

The situation is compounded by the current DHS practice of appealing *grants* of relief. An alien must now consider that even if they win their case, DHS may appeal, forcing them to remain detained throughout the lengthy appeal process, which could stretch their total time in custody to eight months or more *after* an immigration judge has already ruled in their favor. This strategy effectively deters aliens from pursuing the very relief Congress intended to make available, using procedural detention not as a tool for public safety but as a means to force capitulation.

Delays in the adjudication of this habeas petition and those brought by aliens like Petitioner facilitates exactly what the government is trying to achieve. Accordingly, the

failure to promptly address Petitioner's motion (in no more than 10-days) effectively acts as a constructive denial of itafd

STATEMENT OF FACTS

Mr. odrigo Vaca Gomez is a citizen of Mexico who entered the United States without inspection on or about 2010. He has lived continuously in the country for approximately 15 years without departure.

He maintains a fixed and stable residence in Dallas, Texas, where he resided continuously prior to his apprehension by ICE. On August 2, 2025, Petitioner was a passenger in a vehicle when local police stopped the vehicle due to an alleged traffic violation. When Petitioner was asked for identification, he provided law enforcement with his Employment Authorization Document, but officers told him this document was insufficient. They detained him and transferred him to ICE custody.

Mr. Vaca Gomez was then transferred to the Camp East Montana Detention Facility. As of this date, the Department of Homeland Security has failed to initiate removal proceedings against Petitioner.

Over the last decade, Petitioner has become deeply rooted in his community, forging strong family, social, and professional ties. His immediate family includes four U.S. citizen children, all of whom rely on him for emotional and practical support. Beyond his family, Petitioner has cultivated a network of friends and community members who would provide steadfast assistance and guidance upon his release. These long-standing connections underscore his stability, reliability, and integral role within his community.

Throughout his time in the United States, Petitioner has built a life marked by hard work, integrity, and service. He is a successful professional who owns and operates his own flooring business.

Indeed, numerous individuals have written letters on Mr. Vaca Gomez's behalf, each attesting to his good moral character, integrity, and compassion. Mr. Vaca Gomez's son details how his father has been a source of not just financial support but also emotional support for himself and his siblings, given the recent murder of Mr. Vaca Gomez's wife. Without him, there is no one left to care for his children. In summary, Mr. Vaca Gomez has demonstrated exemplary moral character, strong work ethic, and deep compassion for others. He has no criminal history and poses neither a danger to the community nor a flight risk.

Mr. Vaca Gomez has an I-918A Petition for U Nonimmigrant Status pending and he has been granted Deferred Action by United States Citizenship & Immigration Services. His I-918 has been pending since September 5, 2019, and upon the availability of a U-visa, Mr. Vaca Gomez will eventually be able to adjust his status to that of a legal permanent resident.

In the alternative, Mr. Vaca Gomez is eligible for Cancellation of Removal under INA § 240A(b) (EOIR-42B), as his removal would cause exceptional and extremely unusual hardship to his U.S. citizen children.

After detaining Mr. Vaca Gomez, ICE has since failed to initiate his removal proceedings. Instead of providing him the bond hearing to which he is entitled under the law, he remains detained without the due process guaranteed by the Constitution. And this

was done even though, Mr. Vaca Gomez like many other noncitizens being detained without a bond hearing right now, has no criminal convictions or civil judgments against him in the United States or his native Mexico. Because Mr. Vaca Gomez is being detained in ICE custody without being afforded the bond hearing required under the law, he seeks this Court's urgent intervention

Because Mr. Gomez Vaca is 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.³ 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.⁴

- I. **Mr. Gomez Vaca Is Likely to Succeed on the Merits of his Claims.**
 - A. **Mr. Gomez Vaca 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.**

³ *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

⁴ *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. Gomez Vaca 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. As numerous federal district courts have already concluded, this position is legally indefensible. The multitude of detailed legal reasons with citations to supporting authority demonstrating a strong likelihood of success are included in the Habeas Petition being filed concurrently with the instant motion.

i. His Detention Violates Due Process.

Noncitizens are entitled to due process of law under the Fifth Amendment.⁵ 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:

- (1) the private interest that will be affected by the official action;

⁵ *Demore v. Kim*, 538 U.S. 510, 523 (2003).

(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.⁶

Mr. Gomez Vaca addresses the *Matthews* factors in turn.

Private interest. It is undisputed Mr. Gomez Vaca 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.”⁷ 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.”⁸

Mr. Vaca Gomez has not only been held in ICE detention without a bond hearing or the possibility of obtaining one for weeks, he was also moved 643 miles across the state of Texas 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.”⁹ The first *Matthews* factor supports Mr. Vaca Gomez's claim of a Fifth Amendment violation.

⁶ *Matthews*, 424 U.S. at 335.

⁷ *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

⁸ *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)).

⁹ *Id.*

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.”¹⁰ 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 Mr. Gomez Vaca has been and continues to be unlawfully detained. Notably, the government’s new position contradicts nearly three decades of consistent agency action (including in Mr. Gomez Vaca’s own case) holding bond hearings and setting bond for noncitizens who are EWI. Significantly, a bond hearing before a neutral adjudicator in accordance with 8 U.S.C. § 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 (in Mr. Gomez Vaca’s case, those government interests were already heard and bond was issued nonetheless, signifying that his current detention is certainly erroneous). This *Matthews* factor weighs in favor of Mr. Gomez Vaca 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.¹¹ Petitioner does not dispute that the government and the public

¹⁰ *Id.* at *8.

¹¹ *Matthews*, 424 U.S. at 335.

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 they currently exist; meanwhile, the government is asking the Court to ignore multiple provisions of the INA. Mr. Gomez Vaca is not a flight risk nor a danger to the community. Nor is Mr. Gomez Vaca 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. Gomez Vaca's habeas petition.

Because all three *Matthews* factors favor Mr. Gomez Vaca's position, this Court should determine that Mr. Gomez Vaca 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.¹²

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;

¹² See *Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025).

and (4) is inconsistent with decades of prior statutory interpretation and practice.¹³

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."¹⁴ 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*."

¹³ *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).

¹⁴ 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)).

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.¹⁵

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.”¹⁶ 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.¹⁷ In contrast, 8 U.S.C. § 1226, titled “Apprehension and detention of aliens,” governs the arrest and detention of noncitizens

¹⁵ 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”).

¹⁶ *Corley v. United States*, 556 U.S. 303, 314 (2009).

¹⁷ 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 8 U.S.C. §§ 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).

already present within the United States.¹⁸ Petitioner, having been arrested in the interior decades after his entry, falls squarely within the purview of 8 U.S.C. § 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.¹⁹ In January 2025, Congress passed the LRA for the purpose of making certain noncitizens who are present in the U.S. without being admitted or inspected by an immigration officer subject to mandatory detention.²⁰ Specifically, the LRA 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 8 U.S.C. § 1225(a)(1), and (2) a *conduct* requirement (having been charged with, arrested for, or convicted of specific offenses like burglary or theft).²¹ 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

¹⁸ *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.”).

¹⁹ 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.”).

²⁰ Pub. L. No.119-1, 139 Stat. 3 (2025).

²¹ 8 U.S.C. § 1226(c)(1)(E).

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”).

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 it into law.²² If DHS and EOIR’s new interpretation is accurate, then the inescapable conclusion is that the LRA did absolutely nothing because, as DHS and EOIR now claim, every noncitizen covered by the LRA’s amendments was already subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

²² <https://www.npr.org/2025/01/29/g-s1-45275/trump-laken-riley-act>

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.²³ 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."²⁴ 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 Mr. Gomez Vaca. 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 8 U.S.C. § 1357(a) provide the authority for warrant-based arrests for interior enforcement and arrests of noncitizens already present in the U.S.

²³ *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).

²⁴ 8 C.F.R. § 1.2.

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) is unlawful.

Here, Mr. Gomez Vaca 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.²⁵ He is all the more likely to succeed on his claim because he did in fact have a § 1226 bond hearing in 2018 with no objection thereto by the Respondents, yet now the Respondents would contend it was all for nought.

II. Mr. Gomez Vaca Faces Immediate and Irreparable Harm.

A movant “must show a real and immediate threat of future or continuing injury apart from any past injury.”²⁶ Continued unlawful detention is, by its very nature, an

²⁵ 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).

²⁶ *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014).

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.²⁷ Each day Mr. Gomez Vaca remains in custody, he is irreparably harmed by the loss of his fundamental liberty—a cruel irony for a man who was previously free for more than seven years on IJ bond until the Respondents simply decided they would change their mind and try to erase by fiat some three decades of practice and precedent.

The harm is not merely abstract. Mr. Vaca Gomez 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. Vaca Gomez 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 his belongs.

III. The Balance of Equities and Public Interest Weighs in Mr. Gomez Vaca'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.”²⁸ Here, the balance of hardships weighs overwhelmingly in Mr. Gomez Vaca’s favor. The injury to Mr. Gomez Vaca —unconstitutional detention and risk to his well-being therein—is severe and

²⁷ *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

²⁸ *Nken v. Holder*, 556 U.S. 418, 435 (2009).

immediate. Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law.²⁹

Conversely, the harm to Respondents is nonexistent. Mr. Gomez Vaca is not among those Congress prescribed for mandatory detention. Nor is Mr. Gomez Vaca a danger to the community or a flight risk. Moreover, to the extent the government disagrees with any of these statements, its position was already heard and overruled in Mr. Gomez Vaca's IJ bond hearing in 2018, and in any event it could have the same recourse once again, i.e. making those arguments to a neutral adjudicator during a bond hearing pursuant to § 1226. Surely, Respondents cannot claim any harm, much less substantial harm, would be caused by affording Mr. Gomez Vaca the same sort of bond hearing that he has already had once and to which it did not object on jurisdictional grounds. Indeed, Respondents have afforded such bond hearings to similarly situated noncitizens for decades in accordance with the INA's statutory scheme.³⁰ 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. Gomez Vaca Seeks the Same Injunctive Relief Being Granted to Nearly Every Similarly Situated Habeas Petitioner.

Mr. Gomez Vaca 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

²⁹ *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).

³⁰ *See Martinez*, 2025 WL 2598379, at *5.

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.³¹ 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.”³² 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.”³³

These remedies preserve rather than alter the status quo.³⁴ The status quo ante litem is “the last uncontested status which preceded the pending controversy.” In the instant case, that would mean immediate release of the Petitioner under the IJ bond he had posted and complied with for the last 7+ years. Alternatively, it would mean another bond hearing before a neutral IJ, which for the last thirty years was the status quo for noncitizens who were

³¹ 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).

³² *Id.* (citing *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025)).

³³ *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)).

³⁴ *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).

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 INA's statutory scheme. Injunctive relief is, therefore, appropriate in Mr. Gomez Vaca 's case.

CONCLUSION

For the foregoing reasons, Petitioner Mr. Vaca Gomez 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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