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UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

Franklin HERNANDEZ HERNANDEZ,

Petitioner

v.

KRISTI NOEM, in her official capacity as  
Secretary of the Department of Homeland  
Security,

TODD LYONS, in his official capacity as  
Acting Director of Immigration and Customs  
Enforcement,

ARTHUR WILSON, in his official capacity as  
ICE Field Officer Director,

JOHNNY CHOATE, in his official capacity as  
the warden of the Aurora Immigration  
Detention Facility,

PAMALA BONDI, in her official capacity as  
the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs  
Enforcement.

The Board of Immigration Appeals

Respondents

Civil No.: **1:25-cv-03983-DDD-NRN**

PETITIONER'S REPLY TO THE  
GOVERNMENT'S RESPONSE TO  
PETITIONER'S MOTION FOR RELEASE  
PENDING RESOLUTION OF PETITION  
FOR WRIT OF HABEAS CORPUS

IMMIGRATION HABEAS CASE

1           **I.       The Court Has Inherent Authority to Order Release**

2           Petitioner agrees with Respondents that the most efficient course would be for the Court to  
3 resolve the fully briefed habeas petition on the merits. The statutory question presented is purely legal,  
4 the record is complete, and no further factual development is necessary. If the Court is prepared to rule,  
5 a prompt merits decision would obviate the need for interim relief.  
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7           However, while the petition remains under advisement, Petitioner continues to suffer an  
8 ongoing deprivation of physical liberty without access to a lawful bond framework. Petitioner has now  
9 been detained for over two months without a valid opportunity to seek release under 8 U.S.C. § 1226(a),  
10 despite the fact that an Immigration Judge previously determined he poses neither a danger to the  
11 community nor a flight risk. The present detention rests solely on the contested statutory interpretation  
12 currently before this Court.  
13

14           Federal courts possess inherent authority in habeas proceedings to order temporary release  
15 where necessary to preserve the effectiveness of the writ. The Tenth Circuit has expressly recognized  
16 that “it is within the inherent power of a federal district court to enlarge a habeas petitioner on bond  
17 pending hearing and decision on his application.” *Pfaff v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981).  
18 Although such relief is reserved for exceptional circumstances or substantial claims, habeas courts  
19 retain equitable authority to ensure that judicial review remains meaningful and that the writ does not  
20 become hollow while a petitioner remains confined.  
21

22           This case presents precisely the type of circumstance in which that authority may properly be  
23 exercised. The merits petition raises a substantial and unsettled question of statutory interpretation. The  
24 case is fully submitted. Petitioner’s continued detention is not grounded in any individualized  
25 determination of danger or flight risk, but instead flows entirely from the disputed legal question now  
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1 under consideration. Every additional day of confinement is an irretrievable loss of liberty that cannot  
2 be remedied after the fact.

3 Accordingly, while Petitioner respectfully urges prompt adjudication on the merits, the Court  
4 unquestionably possesses the authority to order conditional release pending decision should it  
5 determine that interim relief is necessary to protect the fundamental liberty interests at stake and  
6 preserve the effectiveness of habeas review.  
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## 8 **II. Petitioner's Claims Are Substantial**

9 Respondents argue that Petitioner cannot satisfy the standard for interim release because he has  
10 not demonstrated a "clear case on the merits." That framing overstates what is required and understates  
11 the nature of the question presented here. Petitioner need not prove certain victory; he must show that  
12 his habeas petition raises substantial claims. It does.  
13

### 14 **A. The Issue Is Unsettled in This Circuit**

15 Respondents acknowledge that neither this Court nor the Tenth Circuit has resolved the central  
16 statutory question presented, whether Petitioner's detention is governed by 8 U.S.C. § 1225(b) or §  
17 1226(a). The absence of controlling authority in this Circuit confirms that the issue is neither frivolous  
18 nor foreclosed. It is a serious question of statutory interpretation that directly determines whether  
19 Petitioner is subject to mandatory detention or entitled to a bond framework.  
20

21 Where a habeas petition presents an unresolved and consequential question of federal law, one  
22 that determines the scope of the Government's authority to detain, it necessarily raises a substantial  
23 claim. The substantiality inquiry does not require a prediction that the petitioner will prevail. It asks  
24 whether the claim is serious, non-frivolous, and worthy of judicial consideration. This case plainly  
25 meets that threshold.  
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1 Indeed, the Government's own briefing on the merits demonstrates that the statutory question  
2 requires extended analysis of the text, structure, and purpose of the detention provisions. That alone  
3 underscores that the petition presents a genuine legal dispute, not a foreclosed argument.

4 **B. The Split of Authority Confirms Substantiality**

5 The breadth of litigation nationwide further confirms the substantial nature of the question.  
6 Numerous district courts have addressed this issue, with conflicting outcomes. Respondents cite  
7 decisions supporting their position; Petitioner has cited decisions reaching the opposite conclusion.  
8 Most recently, the Fifth Circuit has weighed in on the issue. The existence of appellate consideration,  
9 and disagreement among federal courts, demonstrates that the legal question is contested and  
10 consequential.  
11

12 A split of authority does not weaken substantiality; it reinforces it. When federal courts across  
13 the country are divided on the scope of the Government's detention authority, the issue is by definition  
14 substantial. It is precisely the type of serious statutory dispute that warrants careful adjudication.  
15

16 Substantial does not mean certain. It does not require Petitioner to demonstrate that victory is  
17 inevitable. It requires only that the petition presents a serious, non-frivolous challenge to the legality  
18 of detention. Given the unsettled nature of the law in this Circuit and the acknowledged disagreement  
19 among federal courts, that standard is easily satisfied here.  
20

21 **III. Extraordinary Circumstances Exist**

22 Although interim release in habeas proceedings is reserved for unusual situations, the  
23 circumstances here are precisely the type that justify temporary relief pending adjudication. Petitioner's  
24 continued detention is not driven by factual uncertainty, public safety concerns, or flight risk. It persists  
25 solely because of a disputed legal classification that is fully briefed and under advisement before this  
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1 Court. That combination of factors constitutes an extraordinary circumstance within the meaning of  
2 *Pfaff*.

3 **A. The Case Is Fully Briefed and Turns Solely on a Pure Question of Law**

4 There are no factual disputes remaining in this case. The parties agree on the relevant  
5 immigration history, the procedural posture of the removal proceedings, and the custody determinations  
6 that have occurred. The sole issue before the Court is a legal one: whether Petitioner's detention is  
7 governed by 8 U.S.C. § 1225(b) or § 1226(a).

8  
9 No evidentiary hearing is required. No factual development is pending. The habeas petition has  
10 been fully briefed and is under advisement. Petitioner's continued confinement therefore does not serve  
11 to preserve the status quo while factual matters are resolved; it exists only because of an unresolved  
12 statutory interpretation dispute.

13  
14 That posture materially distinguishes this case from the ordinary habeas context. Continued  
15 detention is not tied to:

- 16
- 17 • any finding of dangerousness,
  - 18 • any finding of flight risk, or
  - 19 • any ongoing factual uncertainty.

20 Instead, it flows exclusively from the Government's legal position regarding the proper  
21 statutory detention framework. Where liberty depends solely on the resolution of a pure legal question  
22 already submitted to the Court, ongoing physical confinement during judicial deliberation is  
23 extraordinary.  
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1       **B. A Neutral Immigration Judge Already Determined Petitioner Is Neither a Danger Nor a**  
2       **Flight Risk**

3           This case is further distinguished by the fact that an Immigration Judge previously granted  
4       Petitioner bond after a custody hearing. That determination necessarily reflects a finding that Petitioner  
5       does not pose a danger to the community and does not present a flight risk warranting continued  
6       detention.

7           Respondents' response gives little weight to that adjudication. Yet it is highly significant. A  
8       neutral decisionmaker has already concluded that release under conditions is appropriate. Petitioner's  
9       current confinement is not the result of an individualized public safety assessment, but rather the  
10      product of the Government's interpretation of which statutory provision governs his detention.  
11

12           In practical terms, the Government's public safety interest is therefore minimal. The question  
13      before this Court is not whether Petitioner should be detained based on risk factors; it is whether the  
14      Government is applying the correct detention statute. Continued detention under these circumstances  
15      rests on legal classification alone.  
16

17           That fact sharply distinguishes this case from typical habeas petitions involving criminal  
18      sentences, post-conviction custody, or detention supported by contested factual findings. Here, a  
19      neutral adjudicator has already determined that Petitioner may be safely released under appropriate  
20      conditions. The only barrier to release is the unresolved statutory issue now pending before this Court.  
21

22       **C. Ongoing Detention Constitutes Irreparable Harm**

23           The loss of physical liberty is irreparable by its very nature. The Supreme Court has repeatedly  
24      emphasized that freedom from bodily restraint lies at the core of the liberty protected by the Due  
25      Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Even minimal periods of unlawful  
26      confinement constitute irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). And in the habeas  
27      context specifically, the petitioner's interest in release during review is always substantial because the  
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1 writ exists to provide a swift and effective remedy for unlawful restraint. *Hilton v. Braunskill*, 481 U.S.  
2 770, 775 (1987).

3 Every additional day Petitioner remains detained is a day of liberty that cannot be restored. If  
4 this Court ultimately concludes that § 1226(a) governs and that Petitioner was entitled to a bond  
5 framework, no later ruling can return the time already spent in custody. The injury is ongoing and non-  
6 compensable.  
7

8 Without the possibility of interim relief, habeas review risks becoming hollow in cases where  
9 a petitioner remains confined while a purely legal question is under consideration. The Court  
10 unquestionably retains authority to ensure that the writ remains meaningful and that judicial review  
11 does not come at the cost of continued, potentially unauthorized detention.  
12

13 For these reasons, the circumstances here, purely legal dispute, prior bond finding, and ongoing  
14 deprivation of physical liberty, are extraordinary and warrant temporary release if the Court is not  
15 prepared to issue an immediate merits decision.  
16

#### 17 **IV. The Government's Remedy Argument Is Incorrect**

18 Respondents contend that even if Petitioner were to prevail on the merits, the proper remedy  
19 would be only a bond hearing before an Immigration Judge, not release, and therefore interim release  
20 would be inappropriate. That argument misconstrues both the relief requested and this Court's authority  
21 in habeas proceedings.  
22

#### 23 **A. Petitioner Does Not Seek to Bypass the Bond Framework**

24 Petitioner is not asking this Court to conduct its own custody hearing, to weigh danger or flight  
25 risk in the first instance, or to bypass the statutory bond procedures established by Congress. Nor does  
26 Petitioner seek "untethered" release.  
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1 Rather, Petitioner’s position is straightforward: if 8 U.S.C. § 1226(a) governs his detention,  
2 then he is entitled to the discretionary custody framework that § 1226(a) provides. In this case, that  
3 framework has already been applied. An Immigration Judge conducted a custody hearing and ordered  
4 release on bond after determining that Petitioner poses neither a danger nor a flight risk.  
5

6 Petitioner’s continued detention flows solely from the Government’s invocation of § 1225(b)  
7 and the automatic stay mechanism that followed. If this Court ultimately concludes that § 1226(a)  
8 controls, then the legal foundation for continued mandatory detention collapses. In that circumstance,  
9 restoring Petitioner to the bond framework that already produced a release order would not circumvent  
10 statutory procedures—it would vindicate them.  
11

12 **B. Habeas Courts Possess Authority to Order Conditional Release**

13 More fundamentally, federal courts sitting in habeas are not limited to directing additional  
14 administrative proceedings where detention authority is legally defective. The writ of habeas corpus  
15 has long empowered courts to order release where custody is unauthorized. *See, e.g., Zadvydas v.*  
16 *Davis*, 533 U.S. 678, 687–88 (2001) (recognizing that habeas permits courts to remedy unlawful  
17 executive detention); *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (acknowledging courts’ authority  
18 to release petitioners pending review).  
19

20 When the legal basis for detention is invalid, courts may:

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- 22 • order conditional release,
  - 23 • restore a prior bond determination,
  - 24 • impose reporting or supervision conditions, or
  - 25 • craft other equitable relief sufficient to cure the unlawful restraint.
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1 The equitable authority inherent in habeas proceedings is designed to ensure that unlawful  
2 custody does not continue while courts deliberate over its legality. That authority is not confined to  
3 ordering another hearing where the detention itself rests on an erroneous statutory classification.

4 **C. If Detention Authority Is Legally Defective, Release Is an Appropriate Remedy**

5 Respondents' position effectively assumes the correctness of their statutory interpretation. But  
6 if the Court concludes that Petitioner is not properly detained under § 1225(b), then his present  
7 confinement lacks valid statutory authorization. In such circumstances, release—whether through  
8 reinstatement of bond or conditional supervision—is not extraordinary; it is the ordinary remedy for  
9 unlawful detention.  
10

11 The question before this Court is not whether bond procedures exist in the abstract. It is whether  
12 Petitioner is being detained under the correct statutory framework. If he is not, then continued detention  
13 cannot be justified merely by invoking the possibility of future administrative proceedings.  
14

15 Accordingly, Respondents' reliance on cases suggesting that the remedy would be limited to a  
16 bond hearing does not undermine the Court's authority to grant interim release. Where detention  
17 authority is legally defective, habeas courts may order release on appropriate conditions to ensure that  
18 unlawful confinement does not persist.  
19

20 **V. Efficiency Does Not Override Liberty**

21 Respondents argue that the Court should simply adjudicate the merits of the habeas petition and  
22 deny the Motion as moot, emphasizing efficiency and judicial economy. Petitioner agrees that a prompt  
23 merits decision would be the most efficient resolution. But judicial efficiency, while important, is not  
24 a constitutional value. Liberty is.  
25

26 The writ of habeas corpus exists to safeguard against unlawful restraint. When a petitioner  
27 remains confined while a substantial legal challenge to detention is under consideration, interim relief  
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1 is not an anomaly, it is a recognized feature of habeas practice. The Tenth Circuit has expressly  
2 acknowledged the Court's inherent authority to grant release pending adjudication. *Pfaff v. Wells*, 648  
3 F.2d 689, 693 (10th Cir. 1981). That authority would have little meaning if it could never be exercised  
4 whenever a petition is "fully briefed" and awaiting decision.

5  
6 Under Respondents' logic, interim relief would always be inappropriate so long as a court  
7 could, in theory, decide the merits instead. But that reasoning would effectively eliminate the  
8 possibility of temporary release in any pending habeas case. Such a rule would nullify *Pfaff* and render  
9 the Court's inherent authority illusory.

10  
11 Petitioner does not ask the Court to prioritize motion practice over merits adjudication. He asks  
12 only that, if deliberation continues, his liberty not be forfeited solely in the name of administrative  
13 convenience. Where continued detention rests entirely on an unresolved legal question, and each day  
14 of confinement constitutes an irretrievable loss of liberty, efficiency cannot be permitted to outweigh  
15 the fundamental purpose of habeas corpus.

16 **VI. Conclusion**

17  
18 Petitioner agrees that the most efficient course would be for the Court to promptly resolve the  
19 fully briefed habeas petition on the merits. The dispositive question is purely legal, the record is  
20 complete, and no further proceedings are necessary.

21  
22 However, until that decision issues, Petitioner remains detained without access to the bond  
23 framework that would apply if § 1226(a) governs. He has now spent over two months in custody  
24 without a lawful opportunity for release, despite a prior Immigration Judge's determination that he  
25 poses neither a danger to the community nor a flight risk. His continued confinement rests solely on a  
26 contested statutory interpretation now under advisement.

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The Court possesses inherent authority in habeas proceedings to order temporary release where substantial claims and extraordinary circumstances exist. Those circumstances are present here: an unsettled and consequential legal question, a fully submitted petition, a prior individualized finding supporting release, and the ongoing, irreparable deprivation of physical liberty.

Accordingly, Petitioner respectfully requests that the Court either:

1. Promptly adjudicate the Petition for Writ of Habeas Corpus on the merits; or
2. In the alternative, order Petitioner’s release on appropriate conditions pending resolution of the petition.

Such relief would safeguard the fundamental liberty interests at stake while preserving the integrity and effectiveness of the writ of habeas corpus.

DATED: February 6, 2026

Respectfully submitted,  
  
/S/ ALEC S. BRACKEN