

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

JOSE RAFAEL ALAMBARRIO-  
CARDENAS,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No. 3:26-cv-276

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

RESPECTFULLY SUBMITTED,

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## INTRODUCTION

Petitioner, Jose Rafael Alambarrio-Cardenas, a native and citizen of Venezuela, seeks judicial intervention through this petition for a writ of habeas corpus following his sudden and arbitrary re-detention by U.S. Immigration and Customs Enforcement (ICE). After entering the United States in August 2023 and establishing a positive credible fear of persecution based on [REDACTED] Mr. Alambarrio-Cardenas was released on recognizance and has since demonstrated exemplary compliance with all immigration protocols. During his time at liberty, he has built a profound life in Texas, marrying a U.S. citizen educator, serving as a primary provider and father figure to two stepchildren, and pursuing a licensed career as an apprentice electrician. Despite his pending applications for asylum and a marriage-based adjustment of status—both of which reached the final interview stage in November 2025—ICE abruptly detained Mr. Alambarrio-Cardenas during a routine check-in on January 25, 2026, without notice, explanation, or the opportunity for a bond hearing. This unexpected deprivation of liberty has not only stalled his path to legal permanent residency but has also inflicted severe medical and financial duress upon his U.S. citizen family, who rely entirely on his support.

Petitioner has not and will not be provided with a bond hearing or any semblance of process by which to challenge ICE's sudden and unjustified decision to re-detain Mr. Alambarrio-Cardenas without following its own regulations or the relevant statutes. As a result, Petitioner is and will continue to be unlawfully detained by ICE. Petitioner respectfully requests that this Court find Mr. Alambarrio-Cardenas's detention unlawful

and expeditiously ordering the government to remedy it by restoring the status quo which was his release on an Order of Release on Recognizance (ORR).

**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 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 it.

### **STATEMENT OF FACTS**

Petitioner, Mr. Alambarrio-Cardenas, a native and citizen of Venezuela, entered the United States without inspection (EWI) by foot near Brownsville, Texas, on or about August 7, 2023. Subsequently, he was encountered by Border Patrol who detained him. During his initial processing, Mr. Alambarrio-Cardenas expressed a fear of returning to Venezuela, citing past torture and persecution by [REDACTED]

[REDACTED] On August 12, 2023, an asylum officer determined Mr. Alambarrio-Cardenas established a positive credible fear of persecution, noting that his testimony was credible and he had previously suffered severe physical harm and psychological trauma.

A Notice to Appear (NTA) was issued on August 13, 2023, placing him in section 240 removal proceedings. On August 29, 2023, Mr. Alambarrio-Cardenas was released from ICE custody on an Order of Release on Recognizance (ORR) pursuant to the authority provided in 8 U.S.C. § 1226.<sup>1</sup> Thereafter, Mr. Alambarrio-Cardenas filed a Form I-589, Application for Asylum and for Withholding of Removal. Mr. Alambarrio-Cardenas's removal proceedings and asylum application remain pending before an IJ.

Following his release, Mr. Alambarrio-Cardenas met and fell in love with his (now) wife who is an U.S. citizen and elementary school teacher. The two of them were married on June 20, 2025, in Collin County, Texas. Friends and family attest that the marriage is rooted in a genuine mutual affection, and that Mr. Alambarrio-Cardenas is a "true team" with his wife. Additionally, Mr. Alambarrio-Cardenas acts as a father figure to Heather's two children, Savannah (18) and S [REDACTED] (11). Savannah identifies him as a hard worker who has committed to helping pay for her

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<sup>1</sup> (App. to Pet. Ex. 7.)

college education starting in Fall 2026. A Form I-130, Petition for Alien Relative, was filed by Mr. Alambarrio-Cardenas's U.S. citizen spouse on his behalf on September 26, 2025. Concurrently, Mr. Alambarrio-Cardenas filed a Form I-485 to adjust his status to Lawful Permanent Resident on September 29, 2025. Both Mr. Alambarrio-Cardenas and his wife attended a scheduled initial interview for his residency applications on November 26, 2025, in Irving, Texas.

Since Mr. Alambarrio-Cardenas was suddenly detained by ICE, his wife has been prescribed medication for anxiety directly related to her husband's detention. Further adding to her stress is the fact that the family relies on his income as an independent delivery driver to cover essential utilities, phone bills, and groceries.

Despite his pending applications which would grant him LPR status and his complete compliance with ORR, Mr. Alambarrio-Cardenas was detained during a scheduled ICE check-in on January 15, 2026. ICE did not provide him with notice, an explanation, or any semblance of due process before re-detaining him. Furthermore, he has not and will not be provided with a bond hearing by a neutral adjudicator due to the government's new positions and policies detailed both in the filed habeas petition and below. Accordingly, 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.<sup>2</sup> 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

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<sup>2</sup> *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

order might cause the defendant; and (4) the injunction will not disserve the public interest.<sup>3</sup>

- I. **The status quo is Mr. Alambarrio-Cardenas being released from ICE custody and placed back on the Order of Recognizance he was on immediately preceding ICE's sudden unjustified re-detention of him when he dutifully reported for a scheduled check-in.**

The status quo for purposes of injunctive relief is defined as "the last actual, peaceable, non-contested status which preceded the pending controversy."<sup>4</sup> As the Fifth Circuit explained more than 50 years ago:

It is often loosely stated that the purpose of a preliminary injunction is to preserve the status quo. Indeed, some such notion may have influenced the district judge in this case, since he wrote of a 'status quo that would normally be entitled to temporary protection.' It must not be thought, however, that there is any particular magic in the phrase 'status quo.' The purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits. It often happens that this purpose is furthered by preservation of the status quo, but not always. If the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury, either by returning to the last uncontested status quo between the parties, by the issuance of a mandatory injunction, or by allowing the parties to take proposed action that the court finds will minimize the irreparable injury. The focus always must be on prevention of injury by a proper order, not merely on preservation of the status quo.<sup>5</sup>

Here, the "pending controversy" is the re-detention of Mr. Alambarrio-Cardenas on January 15, 2026. The status *preceding* that controversy was years of liberty on an Order

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<sup>3</sup> *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).

<sup>4</sup> *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974).

<sup>5</sup> *Id.* at 576.

of Recognizance issued pursuant to 8 U.S.C. § 1226. That status was "peaceable" and "non-contested." The government disrupted the status quo by arresting Mr. Alambarrío-Cardenas without the requisite findings, notice, or process of any kind. An injunction ordering release, therefore, does not *change* the status quo; it *restores* it. It returns the parties to the position they occupied before the government's allegedly unlawful act.

The Fifth Circuit has recognized that injunctive relief is appropriate to preserve the status quo contemplated by the parties' relationship.<sup>6</sup> *RGI, Inc. v. Tucker & Assocs., Inc.*, 858 F.2d 227, 229 (5th Cir. 1988)

Here, the "relationship" was one of supervision, not incarceration. If detention is treated as the status quo it rewards the government for its swift and unilateral deprivation of liberty. It effectively says because ICE has successfully thrown him in jail before he could seek a TRO, that ICE detention is now the baseline. This creates a perverse incentive for executive agencies to act precipitously and without process when arresting and subjecting individuals to civil detention despite the absence of any justification (i.e. flight or danger) for such detention.

In sum, Petitioner's request for release is simply a request for the Court to restore the status quo while the merits of his legal arguments and habeas petition are litigated

**II. Petitioner Is Likely to Succeed on the Merits of his Claims.**

**A. Petitioner 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.**

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<sup>6</sup> *RGI, Inc. v. Tucker & Assocs., Inc.*, 858 F.2d 227, 229 (5th Cir. 1988) (holding that the Federal Arbitration Act did not divest district courts of jurisdiction to maintain the status quo pending arbitration).

Petitioner is substantially likely to succeed on the merits of his claims because his detention is unlawful under the Due Process Clause of the Fifth Amendment. Respondents' practice of arbitrarily re-detaining noncitizens who were previously released from ICE custody without following the proper regulations and procedures is an egregious violation of noncitizens' due process rights. As numerous federal district courts have already concluded, this practice 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 filed immediately before the instant motion, and are hereby incorporated by reference.

*i. His Detention Violates Due Process.*

Noncitizens are entitled to due process of the law under the Fifth Amendment.<sup>7</sup> 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;
- (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.<sup>8</sup>

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<sup>7</sup> *Demore v. Kim*, 538 U.S. 510, 523 (2003).

<sup>8</sup> *Mathews*, 424 U.S. at 335.

Petitioner addresses the *Mathews* factors in turn.

*Private interest.* It is undisputed Petitioner 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.”<sup>9</sup> 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.”<sup>10</sup>

Petitioner has been held in ICE detention without access to a re-detention hearing or the possibility of obtaining. 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.”<sup>11</sup> The first *Mathews* factor supports Petitioner’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.”<sup>12</sup>

There are procedures in place on when and how to revoke a noncitizen’s release.<sup>13</sup> The DHS is merely choosing not to follow them. In so doing, they are affirmatively

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<sup>9</sup> *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

<sup>10</sup> *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)).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at \*8.

<sup>13</sup> See 8 C.F.R. §§ 241.4(1)(1), (1)(2)(ii), (1)(2)(iii), (1)(2)(iv).

depriving Petitioner, and those similarly situated, of access to the regulations whose intended purpose are to protect his due process rights. Thus, this *Mathews* factor weighs in favor of Petitioner, 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.<sup>14</sup> 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 they currently exist; meanwhile, the government is asking everyone to ignore multiple regulations regarding the detention and re-detention of noncitizens. Petitioner is not a flight risk nor a danger to the community, and he has fully complied with the conditions of his prior release. Accordingly, the government's interest in upholding the Constitution and immigration laws is fulfilled through the relief sought by Petitioner's habeas petition.

Because all three *Mathews* factors favor Petitioner's position, this Court should determine that Petitioner is likely to succeed in demonstrating that his re-detention without proper notice and a re-determination hearing a bond hearing contravenes his due process rights under the Fifth Amendment.

*ii. His Detention Violates the Relevant Regulations.*

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<sup>14</sup> *Mathews*, 424 U.S. at 335.

The government's re-detention of Petitioner without proper notice and a re-determination hearing before a neutral decisionmaker, is contrary to the plain text of the regulations governing same.

Pursuant to regulation, an order of release may be revoked if a noncitizen violates the conditions of his release, when it is required to enforce a removal order, or when a change in circumstances indicates that the noncitizen's release is no longer appropriate. 8 C.F.R. §§ 241.4(1)(1), (1)(2)(ii), (1)(2)(iii), (1)(2)(iv). Only the Executive Associate Commissioner of ICE has the authority to revoke a noncitizen's release, unless impracticable, then the authority may be delegated to the district director of ICE. 8 C.F.R. § 241.4(1)(2). Regulations require that the noncitizen be provided with notice of the reason for the revocation of his release and with an opportunity to challenge those reasons. 8 C.F.R. § 241.4(1)(1).

In Petitioner's case, ICE failed to follow these regulations, thereby resulting in the loss of his personal liberty which is subject to due process protections.<sup>15</sup>

To date, Petitioner has not been provided with a reason for the revocation of his prior release. For almost three years, he was fully compliant with all conditions of his release: he reported for all scheduled check-ins and he kept his address and contact information updated with ICE. He has not been arrested or encountered by law enforcement in the United States and has otherwise been compliant with any/all applicable laws.

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<sup>15</sup> *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at \*6 (D. Md. Aug. 25, 2025).

Here, Petitioner is likely to succeed on his claim that his re-detention violates the aforementioned regulations for all the reasons discussed above.

*iii. 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.<sup>16</sup>

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.

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<sup>16</sup> *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).

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.”<sup>17</sup> 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.<sup>18</sup>

By reading the phrase “seeking admission” out of the statute, the government violates the foundational interpretive canon against surplusage, which requires that courts

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<sup>17</sup> 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)).

<sup>18</sup> *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”).

“give effect, if possible, to every clause and word of a statute.”<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> Petitioner, having been arrested in the interior decades after her 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.<sup>22</sup> In January 2025, Congress passed the LRA for the purpose of making noncitizens who are

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<sup>19</sup> *Corley v. United States*, 556 U.S. 303, 314 (2009).

<sup>20</sup> *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).

<sup>21</sup> *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.”).

<sup>22</sup> *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.”).

present in the U.S. without being admitted or inspected by an Immigration Office.<sup>23</sup> 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”), and (2) a *conduct* requirement (having been charged with, arrested for, or convicted of specific offenses like burglary or theft).<sup>24</sup> 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.

Third, the INA’s implementing regulations and broader statutory framework confirm that IJs retain jurisdiction to grant bond to noncitizens in Petitioner’s circumstances.<sup>25</sup> Among other things, the regulations create a specific jurisdictional bar preventing IJs from conducting bond hearings for “arriving aliens” under 8 C.F.R.

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<sup>23</sup> Pub. L. No. 119-1, 139 Stat. 3 (2025).

<sup>24</sup> 8 U.S.C. § 1226(c)(1)(E).

<sup>25</sup> *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).

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.”<sup>26</sup> By explicitly carving out this specific subset of “applicants for admission,” the regulations create a powerful negative inference: IJs *do* have jurisdiction over “applicants for admission” who are not “arriving aliens,” a category that includes Petitioner. Again, if all “applicants for admission” were already subject to mandatory detention under § 1225(b)(2)(A), this carefully drawn regulatory distinction would be entirely pointless.

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

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).

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<sup>26</sup> 8 C.F.R. § 1.2.

Here, Petitioner is likely to succeed on his claim that his detention without a bond hearing violates the INA for all the reasons discussed above and those further detailed in the habeas petition filed along with the instant motion.<sup>27</sup>

### **III. Petitioner Faces Immediate and Irreparable Harm.**

A movant “must show a real and immediate threat of future or continuing injury apart from any past injury.”<sup>28</sup> 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.<sup>29</sup> Each day Petitioner remains in custody, he is irreparably harmed by the loss of his fundamental liberty. Additionally, Individuals released on ORR or other forms of conditional release have a liberty interest in their “continued liberty.”<sup>30</sup> This “continued liberty” is protected by the Fifth Amendment because “it includes many of the core values of unqualified liberty.... And its termination inflicts a ‘grievous loss’ on the [released individual] and often on others.”<sup>31</sup>

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<sup>27</sup> 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); *Chafra 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).

<sup>28</sup> *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014).

<sup>29</sup> *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

<sup>30</sup> *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

<sup>31</sup> *Id.*

Absent relief from this Court, Petitioner will remain detained and denied his liberty, removed from his livelihood and freedom.

**IV. The Balance of Equities and Public Interest Weighs in Petitioner'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.”<sup>32</sup> Here, the balance of hardships weighs overwhelmingly in Petitioner's favor. The injury to Petitioner—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.<sup>33</sup>

Conversely, the harm to Respondents is nonexistent. Petitioner does not pose a danger to the community or a flight risk. 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.

**CONCLUSION**

For the foregoing reasons, Petitioner 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 on the

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<sup>32</sup> *Nken v. Holder*, 556 U.S. 418, 435 (2009).

<sup>33</sup> *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).

same ORR conditions he dutifully complied with prior to—and indeed at—the time he was re-detained when reporting to ICE-ERO as required.

RESPECTFULLY SUBMITTED,

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