

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

PEDRO CHIHUAHUA FLORES,

PETITIONER,

v.

MARKWAYNE MULLIN, Acting
Secretary; TODD LYONS, Acting Director
of ICE; PAMELA BONDI, U.S. Attorney
General; ROBERT CERNA, Field Office
Director of Enforcement and Removal
Operations, Dallas Field Office,
Immigration and Customs Enforcement,

RESPONDENTS.

Case No. 1:26-cv-148

PETITION FOR A WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. § 2241,
BY A PERSON SUBJECT TO UNLAWFUL
DETENTION

PETITION FOR WRIT OF HABEAS CORPUS

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

Dan Gividen

Attorney for Petitioner

Texas State Bar No. 24075434

18208 Preston Rd., Ste. D9-284

Dallas, TX 75252

972-256-8641

Dan@GividenLaw.com

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES	4
INTRODUCTION	7
JURISDICTION AND VENUE	11
PETITIONER’S NEED FOR IMMEDIATE CONSIDERATION IN ACCORDANCE WITH HABEAS CORPUS PURPOSE AND REQUIREMENTS	12
PARTIES.....	13
STATEMENT OF FACTS	14
LEGAL FRAMEWORK	15
I. The relevant statutory provisions of the INA (including provisions which are controlled by <i>Buenrostro-Mendez</i>) demonstrate Petitioner's detention, like the detention of any noncitizen arrested in the interior and placed in § 1229a proceedings is pursuant to § 1226.....	15
II. Harmonization with other regulations/statutes	22
III. The Attorney General—not the Secretary of DHS or ICE Director—has always had the authority to vacate, redetermine, and change ICE's initial bond decision—8 U.S.C. § 1103(g) leaves no doubt that this remains true—even after the Homeland Security Act.	28
IV. Superfluous Language	30
PETITIONER’S DETENTION VIOLATES THE FOURTH AMENDMENT AND DUE PROCESS	34
I. Overview of Relevant Constitutional Principles	34
II. Petitioner’s Fourth Amendment and Due Process Rights have been Violated, As Applied	36
III. Lack of Notice in Violation of Due Process	38
IV. Even if <i>Hurtado</i> were decided correctly (which it was not), it still would be unlawful to detain Petitioner under the new interpretation as it constitutes an expansion amounting to a new rule which cannot be applied retroactively under longstanding Supreme Court and Fifth Circuit precedent.....	39
V. Petitioner’s Continued Detention Violates Due Process	42
A. Procedural Due Process under Mathews.....	44
CLAIMS FOR RELIEF	47

I. COUNT I: VIOLATION OF THE INA	47
II. COUNT II: ICE & EOIR’S VIOLATION OF THEIR OWN REGULATIONS AND PROCEDURES	48
III. COUNT III: VIOLATION OF THE FOURTH AMENDMENT.....	48
IV. COUNT IV: VIOLATION OF RETROACTIVITY DOCTRINE.....	49
V. COUNT V: VIOLATION OF DUE PROCESS	49
PRAYER FOR RELIEF	50
VERIFICATION BY SOMEONE ACTING ON PETITIONER’S BEHALF PURSUANT TO 28 U.S.C. § 2242	51

TABLE OF AUTHORITIES

CASES

<i>Bonilla Conforme v. De Anda-Ybarra</i> , No. 3:26-cv-263-KC, 2026 WL 381110 (W.D. Tex. Feb. 11, 2026).....	9, 34
<i>Bracamontes v. Holder</i> , 675 F.3d 380 (4th Cir.2012)	17
<i>Buenrostro-Mende</i>	19
<i>Buenrostro-Mendez v. Bondi</i> , --- F. 4 th ----, ----, 2026 WL 323330 (5 th Cir. Feb. 6, 2026). 8	
<i>Camacho-Gutierrez v. Thompson</i> , No. 5:25-CV-01876-MA, 2026 WL 195758 (W.D. Tex. Jan. 16, 2026).....	36
<i>Chogllo Chafla v. Scott</i> , Nos. 25-cv-437, 438, 439, 2025 WL 2688541 (D. Me. Sept. 22, 2025).....	36
<i>Clemente Ceballos v. Garite</i> , No. EP-26-CV-00312-DB, 2026 WL 446509 (W.D. Tex. Feb. 10, 2026).....	7
<i>Cordova v. Noem</i> , No. 3:26-CV-97-K-BN, 2026 WL 218938 (N.D. Tex. Jan. 28, 2026). 36	
<i>Cruz-Reyes v. Bondi</i> , No. 5:26-cv-60, 2026 WL 332315 (S.D. Tex. Feb. 3, 2026)	47
<i>Demore v. Kim</i> , 538 U.S. 510 (2003)	11
<i>Duncan v. Walker</i> , 533 U.S. 167 (2001)	33
<i>Emokah v. Mukasey</i> , 523 F.3d 110 (2d Cir.2008)	18
<i>Faudoa-Gonzalez v. Barr</i> , 836 F. App'x 242 (5th Cir. 2020)	41
<i>George v. Noem</i> , No. 3:25-CV-2935-S-BW, 2025 WL 3852946 (N.D. Tex. Dec. 19, 2025), <i>report and recommendation adopted</i> , No. 3:25-CV-02935-S-BW, 2026 WL 30829 (N.D. Tex. Jan. 5, 2026)	36
<i>Hamdi v. Rumsfeld</i> , 542 U.S. 507 (2004)	10, 46
<i>Hassen v. Noem</i> , No. EP-26-CV-00048-DB, 2026 WL 446506 (W.D. Tex. Feb. 9, 2026). 7	
<i>I.N.S. v. St. Cyr</i> , 533 U.S. 289 (2001).....	11, 41, 42
<i>Jacinto v. Trump</i> , No. 4:25CV3161, 2025 WL 2402271 (D.Neb. Aug. 19, 2025).....	48
<i>Knauff v. Shaughnessy</i> , 338 U.S. 537 (1950)	28
<i>Landgraf v. USI Film Prods.</i> , 511 U.S. 244 (1994).....	42, 44

<i>Lopez Benitez v. Francis</i> , No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025).....	40
<i>Marceau v. Noem</i> , No. EP-26-CV-237-KC, 2026 WL 368953 (W.D. Tex. Feb. 9, 2026) ..	7
<i>Martinez v. Mukasey</i> , 519 F.3d 532 (5th Cir. 2008)	18, 36, 47, 48
<i>Mendoza v. Noem</i> , Case No. 5:26-cv-0728-JKP, ECF No. 9 (W.D. Tex. Feb. 26, 2026). 16,	34, 47, 48
<i>Microcomputer Tech. Inst. v. Riley</i> , 139 F.3d 1044 (5th Cir. 1998).....	41, 43
<i>Monteon-Camargo v. Barr</i> , 918 F.3d 423 (5th Cir. 2019).....	41, 42
<i>Mullane v. Cent. Hanover Bank & Tr. Co.</i> , 339 U.S. 306 (1950).....	39
<i>Nguyen v. Hyde</i> , No. 25-cv-11470-MJJ, 2025 WL 1725791 (D.Mass. June 20, 2025)	50
<i>Ochoa v. Vergara</i> , No. 1:26-CV-266-RP, 2026 WL 482211 (W.D. Tex. Feb. 20, 2026)....	7, 36
<i>Ortega-Aguirre v. Noem</i> , No. 4:25-CV-04332, 2025 WL 3684697 (S.D. Tex. Oct. 10, 2025).....	36
<i>Papazoglou v. Holder</i> , 725 F.3d 790 (7th Cir.2013).....	17
<i>Patel v. Crowley</i> , No. 25 C 11180, 2025 WL 2996787 (N.D. Ill. Oct. 24, 2025).....	40
<i>Phong Phan v. Moises Beccerra</i> , No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735 (E.D. Cal. July 16, 2025).....	44
<i>Pizarro Reyes v. Raycraft</i> , No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025).....	9, 33
<i>Preiser v. Rodriguez</i> , 411 U.S. 475 (1973).....	11
<i>Reno v. Flores</i> , 507 U.S. 292 (1993)	35
<i>Rombot v. Souza</i> , 296 F. Supp. 3d 383 (D. Mass. 2017)	50
<i>Salcedo Aceros v. Kaiser</i> , No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025).....	40
<i>SEC v. Chenery Corp.</i> , 332 U.S. 194 (1947).....	41
<i>Sum v. Holder</i> , 602 F.3d 1092 (9th Cir.2010)	18
<i>Trump v. J.G.G.</i> , 604 U. S. ---145 S. Ct. 1003 (2025) (<i>per curiam</i>)	35
<i>Vartelas v. Holder</i> , 566 U.S. 257 (2012)	18, 41, 42

<i>Vieira v. De Anda-Ybarra</i> , 806 F.Supp.3d 690 (W.D. Tex. 2025)	36
--	----

STATUTES

28 U.S.C. § 1391(e)(1)	10
28 U.S.C. § 2241	1, 10
28 U.S.C. § 2243	11
8 U.S.C. § 1101(a)(13)(A)	17, 18
8 U.S.C. § 1101(a)(4)	9, 17
8 U.S.C. § 1103(g)	28, 29
8 U.S.C. § 1182(a)(6)	<i>passim</i>
8 U.S.C. § 1182(a)(7)	20
8 U.S.C. § 1225(b)(1)	21
8 U.S.C. § 1225(b)(2)(A)	<i>passim</i>
8 U.S.C. § 1229a(c)	23
U.S. Const. art. I, § 9, cl. 2	10
U.S. Const. amend. V	35

OTHER AUTHORITIES

H.R. Rep. No. 104-469, pt. 1, at 229 (1996) and H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.)	27
Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312 (Mar. 6, 1997)	27
<i>Matter of Quilantan</i> , 25 I. & N. Dec. 285 (BIA 2010)	18
Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)	45

REGULATIONS

8 C.F.R. § 1.2	32
8 C.F.R. § 1003.19	<i>passim</i>
8 C.F.R. § 1236.1	<i>passim</i>

INTRODUCTION

1. Petitioner, Pedro Chihuahua Flores, is a native and citizen of Mexico who entered the United States without inspection on or about January 1998. Petitioner is a loving and devoted husband and father to his United States citizen common-law wife, Laura Serrato, and three U.S. citizen children, Pedro Daniel (27 years-old), Jaqueline (25 years-old) and [REDACTED] (6 years-old). Petitioner maintains a close relationship with all of his children and two grandchildren, [REDACTED] (4 years-old) and [REDACTED] (3 years-old).

2. Petitioner has been detained by the Department of Homeland Security (DHS) since March 1, 2026 and is currently detained at the Bluebonnet Detention Facility in Anson, Texas. DHS has not provided Petitioner with a bond, or a bond hearing, even though he is not a flight risk or a danger to the community.

3. This habeas petition presents issues related to ICE's arrest (without a warrant or probable cause finding) and detention of Petitioner since without any individualized determination as to flight risk or danger which are not controlled by the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*. Specifically, the instant petition raises the following issues and legal:

- a. Whether ICE's warrantless arrest of Petitioner in the interior of the United States without a warrant or probable cause determination by an official with authority to make one, constituted a violation of the Fourth Amendment as well as 8 U.S.C. § 1357 which is on going and warrants Petitioner's immediate release from ICE custody?

b. Whether ICE and EOIR's failure to follow their own implementing regulations, (i.e. 8 C.F.R. § 1236.1 and § 1003.19), requiring ICE to make a specific individualized custody determination when it arrests individuals it then refers to § 1229a proceedings and specifically providing that IJs have jurisdiction to reconsider ICE's initial determination for all individuals in § 1229a proceedings except those listed in subparagraph (h)(2).

c. Whether the application of *Buenrostro-Mendez* and the government's recent change of interpretation of 8 U.S.C. §§ 1225(b)(2)(A) and § 1226 may be applied retroactively to Petitioner.

d. Whether ICE's detention of Petitioner for months while the lengthy § 1229a proceeding process plays out constitutes a violation of the due process clause of the Fifth Amendment given there is no evidence of flight risk or danger.

4. Significantly, there have been multiple Texas courts that have granted similar habeas petitions on constitutional grounds in the weeks since the Fifth Circuit issued its decision in *Buenrostro-Mendez*.¹ The decisions by such courts have thoroughly addressed the inapplicability of *Buenrostro-Mendez* to constitutional claims challenging ICE

¹ *Ochoa v. Vergara*, No. 1:26-CV-266-RP, 2026 WL 482211, at *3 (W.D. Tex. Feb. 20, 2026) ("Federal district courts in Texas have . . . made this finding subsequent to the Fifth Circuit issuing its opinion in *Buenrostro-Mendez*."); *Hassen v. Noem*, No. EP-26-CV-00048-DB, 2026 WL 446506, at *2 & n.1 (W.D. Tex. Feb. 9, 2026) (holding that *Buenrostro-Mendez* "does not change this case's outcome on procedural due process grounds"); *Clemente Ceballos v. Garite*, No. EP-26-CV-00312-DB, 2026 WL 446509, at *2 & n.2 (W.D. Tex. Feb. 10, 2026) (same); *Marceau v. Noem*, No. EP-26-CV-237-KC, 2026 WL 368953 (W.D. Tex. Feb. 9, 2026) ("The Court's conclusion is not changed by the Fifth Circuit's recent decision in *Buenrostro-Mendez* ...*Buenrostro-Mendez* has no bearing on this Court's determination of whether [petitioner] is being detained in violation of [his] constitutional right to procedural due process.").

detention, rejected arguments by the government that non-citizens have no due process rights, and have provided a historical and well-reasoned analysis of the reasons similar petitions should be—and in fact were—granted based on the Fifth Amendment's due process clause.²

5. Petitioner is cognizant of the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi* and understands the constraints it imposes on this Court with respect to interpreting 8 U.S.C. § 1225(b)(2)(A). That being said, Petitioner believes *Buenrostro-Mendez* was incorrectly decided and has included arguments in the instant petition in support of this position to ensure no such arguments are waived in the event of an appeal by either party. In so doing, it is important to point out that *Buenrostro-Mendez*' holding was limited to the facts and issues presented by that case.³ Indeed, the noncitizens in that case were detained after their very first encounter with immigration officials, (allegedly such detention was pursuant to § 1225(b)(2)(A)), and had never been inspected, released, or otherwise come to DHS' attention.⁴ Accordingly, *Buenrostro-Mendez*' holding is limited to finding that § 1225(b)(2)(A) is applicable to noncitizens detained under those specific facts.⁵ Notwithstanding *Buenrostro-Mendez*, however, it is Petitioner's position that he is subject to detention under U.S.C. § 1226(a), and thus, is entitled to a bond hearing. Petitioner's interpretation of this issue is consistent with nearly three decades of settled

² *Id.*

³ *Buenrostro-Mendez v. Bondi*, --- F. 4th ----, ----, 2026 WL 323330 (5th Cir. Feb. 6, 2026).

⁴ *Id.*

⁵ *Id.*

agency practice and judicial interpretation.⁶ Critically, Petitioner's reading gives full effect to all the INA's provisions, including the statutory definitions given to the terms "admission," "admitted," and "application for admission," and it harmonizes the statutes, regulations, decades of agency practice, and caselaw with the U.S. Constitution.⁷ Petitioner hereby preserves this issue for further appeal.

6. Simply put, *Buenrostro-Mendez* only reached the issue of statutory interpretation, and therefore, it "has no bearing on this Court's determination of whether [a habeas petitioner] is being detained in violation of [his or] her constitutional right to procedural due process."⁸

7. Petitioner, therefore, seeks this Court's urgent intervention, without which, DHS will continue to unlawfully detain him, without a bond hearing, for the duration of removal proceedings.

8. For these reasons and those discussed below, Petitioner respectfully requests the Court to grant his motion for habeas relief, and preliminary injunction, and as a result, order Respondents to immediately release Petitioner.

⁶ 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's decision to pivot from three decades of consistent statutory interpretation and call for [Petitioner's] detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation.").

⁷ 8 U.S.C. §§ 1101(a)(4) and (a)(13)(A).

⁸ *Bonilla Conforme v. De Anda-Ybarra*, No. 3:26-cv-263-KC, 2026 WL 381110, at *2 (W.D. Tex. Feb. 11, 2026).

JURISDICTION AND VENUE

9. This case arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures Act (“A.P.A.”), 5 U.S.C. §§ 500-596, 701-706.

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.* (habeas corpus), U.S. Const. art. I, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

11. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Court’s inherent equitable powers.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because Respondents are agencies, or officers of agencies, of the United States, Respondents and Petitioner reside in this District, Petitioner is detained in this District at the Bluebonnet Detention Facility in Anson, Texas, and a substantial part of the events or omissions giving rise to Petitioner’s claims occurred in this District.⁹

⁹ (App. Ex. 6 – ICE Detainee Locator Results for Petitioner.)

**PETITIONER’S NEED FOR IMMEDIATE CONSIDERATION IN
ACCORDANCE WITH HABEAS CORPUS PURPOSE AND REQUIREMENTS**

13. The writ of habeas corpus is “available to every individual detained within the United States.”¹⁰ “The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody.”¹¹ “Historically, ‘the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.’”¹² “A district court’s habeas jurisdiction,” therefore, “includes challenges to immigration-related detention.”¹³

14. Pursuant to 28 U.S.C. § 2243, a court may grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the respondents “forthwith.”¹⁴ If an order to show cause is issued, respondents should generally be required to file a return “within *three* days unless for good cause additional time . . . is allowed.”¹⁵

15. 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

¹⁰ *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2).

¹¹ *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

¹² *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3–6 (D. Nev. Sept. 17, 2025) (quoting *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001)).

¹³ *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) and *Demore v. Kim*, 538 U.S. 510, 517 (2003)).

¹⁴ 28 U.S.C. § 2243.

¹⁵ *Id.* (emphasis added).

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 28 U.S.C. § 2243 requires.

PARTIES

16. Petitioner, Pedro Chichuahua Flores, is a native and citizen of Mexico who entered the United States without inspection. He was encountered by DHS in the interior of the United States and was detained without being provided a bond, or a bond hearing before a neutral IJ. Petitioner is currently detained at the Bluebonnet Detention Facility in Anson, Texas.

17. Respondent Markwayne Mullin is the Acting Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees Immigration and Customs Enforcement (ICE), which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

18. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

19. Respondent Todd Lyons is Acting Director and Senior Official Performing the Duties of the Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to removal procedures and the detention of immigrants during their removal procedures. Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his official capacity.

20. Respondent Robert Cerna is the Acting Director of the Dallas Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Cerna is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

STATEMENT OF FACTS

21. Petitioner, Pedro Chihuahua Flores, is a native and citizen of Mexico who entered the United States without inspection on or about January 1998. Petitioner is a loving and devoted husband and father to his United States citizen common-law wife, Laura Serrato, and three U.S. citizen children, Pedro Daniel (27 years-old), Jaqueline (25 years-old) and [REDACTED] (6 years-old). Petitioner maintains a close relationship with all of his children and two grandchildren, [REDACTED] (4 years-old) and [REDACTED] (3 years-old).

22. For the last two years, Petitioner has been employed with Arcadia Cold Storage as a warehouse forklift driver. Prior to this employment he had a long career in construction working on foundations and concrete. He is the primary source of income for his family. He pays for all of the home expenses including rent and all utilities. Further, Petitioner suffers from diabetes and high blood pressure which has been exacerbated during his detention by ICE.

23. Petitioner and his family regularly attend the Emmanuel Christian Fellowship Church in Fort Worth, Texas. In fact, this is where his youngest son, , had his dedication ceremony performed. A baby dedication is a ceremony where parents dedicate their child to God, acknowledging that the child is a gift from God and committing to raise him in godly manner.

24. Petitioner was detained by DHS on March 1, 2026 when he was stopped by the Parker County Sheriff's Department for having dark tints on his windows. Because he had an expired driver's license, he was arrested and then turned over to ICE. He is currently detained at the Bluebonnet Detention Facility in Anson, Texas. DHS has not provided Petitioner with a bond, or a bond hearing. Petitioner's detention without a bond hearing is solely a result of its new interpretation of the relevant statutes and policy refusing to provide noncitizens who entered the United States without admission or parole with an opportunity for bond—regardless of whether he poses a danger or flight risk.

25. Petitioner does not have any criminal history. On the contrary, he has been a benefit to, and an active member of, his community. He in no way poses a danger. Accordingly, his continued detention is a violation of the constitution and relevant laws.

LEGAL FRAMEWORK

I. The relevant statutory provisions of the INA (including provisions which are controlled by *Buenrostro-Mendez*) demonstrate Petitioner's detention, like the detention of any noncitizen arrested in the interior and placed in § 1229a proceedings is pursuant to § 1226.

26. Petitioner concedes that *Buenrostro-Mendez* is binding upon this Court unless and until the holding of it is vacated through re-hearing. That being said, Petitioner

must raise those arguments before this Court to ensure they are not considered waived under the Fifth Circuit's general rule treating any arguments—even those foreclosed by controlling precedent—not raised before the district court as waived. Accordingly, this petition will proceed to address the legal framework of all Petitioner's claims even those currently foreclosed before this Court by *Buenrostro-Mendez* so as to preserve the statutory issue for future appeal and/or continued litigation.

27. “*Buenrostro-Mendez* has not eliminated habeas jurisdiction, displaced constitutional limits on immigration detention authority, or insulated unlawful custody from judicial review. Nor did *Buenrostro-Mendez* address distinct claims based on (1) warrantless interior arrests by ICE that invokes Fourth Amendment consideration; (2) re-detention after release that may implicate a protected liberty interest under the Fifth Amendment; (3) procedural due process as to detention without bond for noncitizens who have created a life in the United States; or (4) the constitutionality of prolonged detention even if statutorily authorized.”¹⁶ Therefore, this Court is not precluded from considering Petitioner’s habeas petition on constitutional grounds.

28. Petitioner believes that the findings by the Court in *Buenrostro-Mendez* are incorrect for the reasons detailed below, and that they contradict binding Supreme Court precedent.

29. Post-IIRIRA, the term “admission” and “admitted,” previously absent from the INA were added and defined at 8 U.S.C. § 1101(a)(13)(A), which provides:

¹⁶ *Mendoza v. Noem*, Case No. 5:26-cv-0728-JKP, ECF No. 9 at 9-10 (W.D. Tex. Feb. 26, 2026).

The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien *into the United States* after inspection and authorization by an immigration officer.

30. Meanwhile, the related term “application for admission” (also added by IIRIRA) defined at 8 U.S.C. § 1101(a)(4), provides: “The term ‘application for admission’ has reference to the application for admission *into the United States* and not to the application for the issuance of an immigrant or nonimmigrant visa.”¹⁷

31. The terms “application for admission,” “admission,” and “admitted” all make Congress’ intent clear: Admission cannot happen anywhere other than when at the proverbial door asking to come in. Circuit courts interpreting INA provisions referencing the definition of “admission” at 8 U.S.C. § 1101(a)(13), have explained:

This definition “is limited and does not encompass a post-entry adjustment of status,” because it “refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry.”¹⁸

32. By explicitly defining these terms, the “work” of determining their meaning and the meaning of statutes using them has been done by Congress.¹⁹ And in so doing, courts analyzing such provisions have rejected the government’s claims that an admission

¹⁷ 8 U.S.C. § 1101(a)(4) (emphasis added).

¹⁸ *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) (quoting *Negrete-Ramirez*, 741 F.3d at 1051); *see also Papazoglou v. Holder*, 725 F.3d 790, 793 (7th Cir. 2013) (“That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization.”); *Bracamontes v. Holder*, 675 F.3d 380, 385 (4th Cir. 2012) (“Clearly, neither term includes an adjustment of status; instead, both contemplate a physical crossing of the border following the sanction and approval of United States authorities.”); *Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008) (recognizing that “‘admission’ is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status”).

¹⁹ *Martinez*, 519 F.3d at 543-44.

can happen from within the United States.²⁰ This has been repeatedly affirmed by courts interpreting INA provisions containing these terms.²¹

33. Caselaw applying these definitions to other portions of the INA has left no doubt that the single most important requirement for an “admission” post-IIRIRA is being outside of the United States and passing through a Port of Entry (POE) after inspection by an immigration officer.²² This is true even when the alien does not have documents giving them lawful status. Subsequent to IIRIRA the BIA and every circuit court to address the issue has concluded that “the terms ‘admitted’ and ‘admission,’ as defined in [§ 1101(a)(13)(A)], denote procedural regularity . . . rather than compliance with substantive legal requirements.”²³ This means that even an alien who does not have valid documents allowing them to enter the United States, who is nonetheless waived through a POE by an immigration officer, has been admitted and is not an applicant for admission as defined by

²⁰ See e.g. *id.* (rejecting the government's argument that an alien's adjustment of status within the United States was the equivalent of “being admitted to the United States as an alien lawfully admitted for permanent residence” as that phrase is used in 8 U.S.C. § 1182(h)).

²¹ See generally *Vartelas v. Holder*, 566 U.S. 257 (2012)(discussing IIRIRA's elimination of the entry doctrine through defining admission in 8 U.S.C. § 1101(a)(13) and the application of subparagraphs (C)(i)-(vi) to LPRs who, after a departure, are returning to the U.S. and seeking admission into it which it ultimately held violated the constitution's prohibition against retroactivity).

²² See *Papazoglou*, 725 F.3d at 792-94 (defining “admission” to “encompass the action of an entry into the United States, accompanied by inspection or authorization.”).

²³ *Matter of Quilantan*, 25 I. & N. Dec. 285, 290 (BIA 2010); see also *Martinez v. Att'y Gen.*, 693 F.3d 408, 414 (3d Cir.2012); *Sum v. Holder*, 602 F.3d 1092, 1096 (9th Cir.2010); *Emokah v. Mukasey*, 523 F.3d 110, 118 (2d Cir.2008).

§1225(a)(1).²⁴ The determining factor is whether or not the alien is seeking to enter the United States from outside of the country.

34. Similarly, Petitioner is not “seeking admission” into the United States, because he was encountered within the United States, long after his entry.

35. In *Jennings v. Rodriguez*, the Supreme Court acknowledged that 8 U.S.C. §§ 1225 (b)(1) and (b)(2) pertain to the detention of aliens seeking admission into the United States at a Port of Entry, and §§ 1226(a) and (c) pertain to aliens already in the country pending the outcome of removal proceedings.²⁵

36. The Court in *Buenrostro-Mendez* considered this finding to be merely dicta, but it is not.²⁶ This finding by the Supreme Court was crucial to its ultimate decision. In order to determine whether the *Jennings* respondents were entitled to ongoing bond redeterminations every six months, the Supreme Court had to first identify which detention statute authorized their detention, then interpret and apply said statute to their cases. In so doing, they made the determination that 8 U.S.C. §§ 1225(b)(1) and (b)(2) *only* pertain to aliens seeking admission into the United States at/near the border or Port of Entry.²⁷ Thus, Petitioner does not fall under the detention authority of 8 U.S.C. § 1225(b)(2) as the government alleges in Petitioner’s case.

²⁴ *Id.*

²⁵ *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

²⁶ *Buenrostro-Mendez*, 2026 WL 323330, at *505.

²⁷ *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

37. The Supreme Court's conclusions regarding the statute's interpretation and constitutionality relied heavily on the historically limited rights afforded to aliens at the country's borders. This was not an incidental assumption; the Supreme Court is fully cognizant of the limited constitutional rights at the border, and the government itself argued this precise distinction in support of its interpretation of § 1225(b)(2) and § 1226(a). During oral argument, Justice Breyer, for instance, pointed out the difficult task aliens faced regarding § 1225 due to it being applied at the border.²⁸

38. Furthermore, there is no question the Supreme Court understood § 1226(a)—not § 1225(b)—to apply to aliens who entered without inspection (EWI) and were encountered *within* the United States (and not subject to expedited removal). For example, Justice Sotomayor asked the Solicitor General, "Clarifying question. For an alien who is found in the United States illegally, has not been admitted, are they held under 1225(b) or are they held under 1226(a)?"²⁹ The Solicitor General responded, "So they are held under — if they are not — if they are not detained within 100 miles of the border or within 14 days... then they are under 1226(a) and not (c)."³⁰

39. Seeking further clarity, Justice Sotomayor posed a hypothetical of an EWI alien stating, "I'm talking about an alien who has come into the United States illegally without being admitted who takes up residence 50 miles from the border."³¹ Without

²⁸ (Transcript of Oral Arguments in *Jennings v. Rodriguez*.)

²⁹ (*Id.* at p. 7.)

³⁰ (*Id.* at pp. 7-8.)

³¹ (*Id.* at p. 8.)

hesitation, the Solicitor General confirmed: "The answer is they are held under 1226(a) and that they get a bond hearing under it - - and this is at page 156a of the appendix."³²

40. The simple reality is that the Supreme Court and all the litigants in *Jennings* recognized that 8 U.S.C. § 1225 is a statute applicable at or near the border where the warrant requirement of the Fourth Amendment and the Due Process Clause of the Fifth Amendment have little or no application. This finding is supported by the historical interpretation and application of §§ 1225(b)(2) and 1226(a), and harmonizes the statutes with other INA provisions and regulations.

41. The application of § 1225 at POEs and at/near the border is obvious. The placement of § 1225 strongly supports its border-centric application. It is preceded by statutes plainly applying at POEs: § 1221 (arrival/departure manifests), § 1222 (detention and health examinations of arriving aliens), § 1223 (contracts with transportation companies regarding arriving aliens), and § 1224 (designation of POEs for aircraft). It is immediately followed by § 1225A, governing pre-inspection at airports. Simply put, § 1225 is surrounded by statutes that obviously apply at the borders and POEs.

42. Furthermore, the statute's implementing regulations affirm this understanding. The very first section, 8 C.F.R. § 235.1(a), states: "Generally. Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection, or as otherwise designated in this section." The subsequent regulatory sections under 8 C.F.R. § 235 *et. seq.* consistently

³² (*Id.* at p. 8-9.)

address procedures at the point of entry. Furthermore, most of the implementing regulations have to do with airports, vessels, and other things that are clearly taking place at the border.

43. The Supreme Court recognized this when determining that §1225 only applies to applicants for admission at/near the border or at a POE. This not merely dicta.

44. Petitioner agrees with the Supreme Court's interpretation of 8 U.S.C. §§1225 and 1226 in *Jennings*, and further argues that it is binding precedent upon the Fifth Circuit, not dicta. Because of this, the Fifth Circuit's ruling in *Buenrostro* is in violation of *vertical stare decisis*.

II. Harmonization with other regulations/statutes

45. During oral arguments for *Buenrostro-Mendez*, there was significant discussion about how to harmonize the interpretation of “applicant for admission” and “seeking admission” with other statutes and regulations. As evidenced below, it is Petitioner's position that only the Supreme Court's finding in *Jennings*, that § 1225(b) authorizes the detention of applicants for admission who are “seeking admission” into the country and § 1226 applies to applicants for admission “already in the country” and encountered in the interior, has the ability to harmonize all statutes and regulations.³³

46. For example, millions of foreign nationals arrive at United States POEs annually, seeking entry.³⁴ In 2022 for example, DHS granted approximately 97 million

³³ *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

³⁴ (See App. Ex. 3 – Annual Flow Report, U.S. Nonimmigrant Admissions: 2022, Alice Ward, Office of Homeland Security Statistics, U.S. Dept. of Homeland Security.)

admissions into the U.S., with an estimated 45 million of those admissions being nonimmigrants who were issued an I-94.³⁵

47. Upon arrival, every such individual, regardless of their documentation, is legally deemed an "applicant for admission" pursuant to 8 U.S.C. § 1225(a)(1). This foundational statute, which governs the inspection procedures at all POEs, defines an "applicant for admission" as either "[1] An alien present in the United States who has not been admitted or [2] who arrives in the United States..." 8 U.S.C. § 1225(a)(1).

48. The inspection process mandated by 8 U.S.C. § 1225 functions as a critical sorting mechanism, resulting in one of three primary outcomes. First, an inspecting officer may determine that the alien possesses valid, unexpired documents and is admissible, thereby admitting them into the United States.

49. Or, if the officer determines the alien is inadmissible either for seeking entry through fraud or material misrepresentation (8 U.S.C. § 1182(a)(6)(C)) or for lacking valid entry documents (8 U.S.C. § 1182(a)(7)), the alien will be subject to expedited removal (ER) pursuant to 8 U.S.C. § 1225(b)(1). The alien is subject to expedited removal under 8 U.S.C. § 1225(b)(1)(A). This is a summary process intended to be completed in a matter of hours, if not minutes, prior to entrance into the United States and the attachment of any liberty interests. Issued without anything resembling a hearing or process, the ER order is issued on a single page I-860.

³⁵ (*Id.*)

50. The third outcome encompasses all “other aliens” specified in § 1225(b)(2)(A). These are applicants whom the inspecting officer does not believe to be admissible based on one of the grounds of inadmissibility set forth in § 1182 (other than § 1182(a)(6)(C) or § 1182(a)(7)).³⁶ Every one of the grounds of inadmissibility in § 1182—*except EWI*—may be applicable at the POEs, and therefore, may result in a referral to § 1229a proceedings.

51. In sum, far from a “detention” statute, § 1225 is the precise mechanism by which millions of applicants for admission arriving at the POEs are inspected, admitted, referred for proceedings, or summarily removed every year.

52. Additionally, a finding that § 1225 only applies at the border/POEs further explains, and harmonizes, the different rights afforded to aliens encountered in the interior of the United States, versus those encountered at/near the border.

53. As noted above, aliens who are subject to expedited removal under § 1225(b)(1) have no right to a hearing before an IJ or § 1229a proceedings. However, the overwhelming majority of all other aliens encountered within the United States are entitled to be placed in § 1229a proceedings before an IJ, and have the opportunity to seek relief from removal.

54. EWI aliens, encountered within the United States, may be placed in removal proceedings in a variety of ways, the most common of which is being encountered by ICE. Once ICE encounters the alien, they will detain them and then process them for § 1229a

³⁶ 8 U.S.C. § 1225(b)(2)(A)

removal proceedings. These arrests are subject to the Fourth Amendment and require a warrant. Indeed, 8 U.S.C. § 1357 provides certain officers with the authority to make an arrest under circumstances which parallel established exceptions to the Fourth Amendment's warrant requirement, but such arrests must be followed by the issuance of a warrant by an official who has been given such authority.³⁷ Either way, a warrant is required to arrest any alien encountered within the interior of the United States.

55. To this end, 8 U.S.C. § 1226(a) applies to noncitizens already in the Country and authorizes the arrest and detention of noncitizens, *pursuant to a warrant*, for the purpose of removal proceedings under 8 U.S.C. § 1229a.³⁸

56. Further evidence that the proper interpretation of 8 U.S.C. § 1225 only applies to those aliens at the border/POE is the differing burdens of proof placed on aliens in removal proceedings.

³⁷ The first two paragraphs of 8 U.S.C. §1357(a), titled “Powers without warrant” expressly provide:

Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant— (1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States; (2) to arrest *any alien who in his presence or view is entering or attempting to enter the United States* in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States.

U.S.C. § 1357(a)(1)-(2)(emphasis added).

³⁸ See *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *8 (E.D. Va. Sept. 19, 2025) (“In *Jennings*, the Court explained that § 1225(b) governs ‘aliens seeking admission into the country’ whereas § 1226(a) governs ‘aliens already in the country’ who are subject to removal proceedings.”)(quoting *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)).

57. Specifically, § 1229a(c)(3) allocates the burden on the government to prove removability in cases involving "deportable" aliens (i.e. aliens charges under § 1227); meanwhile, aliens in removal proceedings under § 1182, have the burden pursuant to § 1229a(c)(2), which states.

In the proceeding the alien has the burden of establishing—(A) if the alien is an *applicant for admission*, that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 1182 of this title; or (B) by clear and convincing evidence, that the alien is lawfully present in the United States pursuant to a prior admission.”³⁹

58. It is helpful to consider (c)(2) part (A) versus (B) in context. Paragraph (A), by its very terms applies to an alien who is arriving and seeking to be admitted, but is alleged to be inadmissible, *at the POE*. Said differently, this option is plainly for those arriving aliens referred to as “other aliens” in § 1225(b)(2)(A) seeking admission who are referred for removal proceedings under § 1229a.

59. Paragraph (B) on the other hand, turns on the alien’s physical presence in the United States. The language of the statute acknowledges the difference between an alien seeking admission at the border, versus aliens already present here in the United States, and therefore, does not ask that those already present demonstrate they should be admitted. Instead, aliens already in the United States would only be successful in denying they are inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) if they can demonstrate they were previously admitted. Admission, after all, cannot take place anywhere but from the outside coming in.

³⁹ 8 U.S.C. § 1229a(c)(emphasis added).

60. In acknowledgment of this distinct difference in treatment, the government has, for decades, considered EWI aliens placed in § 1229a removal proceedings to be subject to bond. Since the passage of IIRIRA, it has consistently been agency policy to provide bonds and/or bond hearings to EWI aliens placed in § 1229a removal proceedings, who are not described in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2).⁴⁰ Indeed, Section 1226(a) applies by default to all persons already in the United States who are “pending a decision on whether the [noncitizen] is to be removed from the United States.”

61. When the provisions related to inspection, expedited removal, and removal proceedings before an IJ were amended by IIRIRA, Congress clarified “the amendment of § 1226(a) simply “restate[d]” the detention authority previously found at § 1252(a) “to arrest, detain, and release on bond an alien who is not lawfully in the United States.”⁴¹ Meanwhile, the amendments did not disturb “the existing mandatory detention scheme for noncitizens arriving in the U.S. without a clear right to admission and expanded the scope of” expedited removal to “include certain recently arrived noncitizens.”⁴² These amendments and the statutory scheme simply “reflected [Congress’] understanding of

⁴⁰ See 8 U.S.C. § 1229(b)(2); 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). (“[I]n the decades since IIRIRA was enacted, DHS and the EOIR have applied § 1226(a) to the detention of individuals apprehended within the continental U.S. who entered without inspection and provided them access to release on bond.”).

⁴¹ *Id.* (citing H.R. Rep. No. 104-469, pt. 1, at 229 (1996) and H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.)).

⁴² *Id.*

longstanding due process precedent that recognizes the more substantial due process rights of noncitizens already residing in the U.S. with those of noncitizens recently arriving.”⁴³

62. Thus, the only interpretation that makes sense in harmonizing all of the relevant regulations, is that Congress intended § 1225(a)(2) to apply to aliens encountered at/near the border, and § 1226(a) applies to those encountered within the interior of the United States.

III. The Attorney General—not the Secretary of DHS or ICE Director—has always had the authority to vacate, redetermine, and change ICE's initial bond decision—8 U.S.C. § 1103(g) leaves no doubt that this remains true—even after the Homeland Security Act.

63. It is the historical and statutory framework governing immigration custody leaves little doubt that 8 U.S.C. § 1226's reference to Attorney General was not meant to be replaced by DHS Secretary following the passage of the Homeland Security Act (HAS). Indeed, the history and statutes demonstrate that EOIR retains independent authority to review detention determinations. Upon the passage of IIRIRA, the former INS and EOIR maintained a distinct separation between prosecutorial and adjudicative functions.⁴⁴ This division was explicitly preserved by the Homeland Security Act of 2002. Under 8 U.S.C. § 1103(g), the Attorney General retains all "authorities and functions" that were exercised by EOIR prior to the creation of the Department of Homeland Security (DHS).⁴⁵ This

⁴³ *Id.* (citing H.R. Rep. No. 104-469, p. 1, at 163-66 (recognizing the “constitutional liberty interest[s]” of noncitizens present in the U.S., versus the assumed minimal due process rights of arriving noncitizens) (citing *Knauff v. Shaughnessy*, 338 U.S. 537 (1950))).

⁴⁴ (App. Ex. 1 – Federal Register / Vol. 68, No. 40 / Friday, February 28, 2003 / Rules and Regulations, pp. 9824 – 9828.)

⁴⁵ 8 U.S.C. § 1103(g).

"savings clause" ensures that the transfer of enforcement power to the DHS Secretary did not strip the Attorney General—and by extension, Immigration Judges—of the fundamental power to review administrative determinations and prescribe forms of bond.⁴⁶

64. While 8 U.S.C. § 1226 provides the general statutory basis for the arrest and detention of noncitizens, it is the implementing regulations that define the vesting of custodial authority. Pursuant to 8 C.F.R. §§ 1003.19 and 1236.1, the responsibility for the initial custody determination rests with DHS; however, the power to review, redetermine, and ultimately vacate those decisions is vested in the Immigration Judge. This regulatory structure creates a shared authority where the "final say" remains with the adjudicative body. For noncitizens in § 1229a proceedings—specifically those not excluded by § 1003.19(h)(2)—the right to a bond redetermination hearing is not a matter of agency discretion, but a regulatory mandate that the Executive Branch is bound to follow.

65. The Petitioner maintains that the decision in *Buenrostro-Mendez* does not foreclose the relief sought herein, as that court failed to consider the specific regulatory authority granted to EOIR under the aforementioned sections. Any dicta in *Buenrostro-Mendez* suggesting that the ICE director—a significant ways down from the Secretary of DHS on the DHS organizational chart—may unilaterally determine which classes of noncitizens are eligible for bond hearings ignores the fact that such a change would require a formal rescission of the existing regulations.

⁴⁶ *Id.*

66. To date, Petitioner is unaware of ICE, DHS, or DOJ claiming that they have changed, altered, or otherwise intended an actual change to the validly promulgated regulations. Accordingly, this is not controlled by the APA and this claim is not an APA claim. Rather, this claim rests on the fact that the government does not claim it altered the regulations, *Buenrostro-Mendez* did not address them, and there is no argument Petitioner is aware of that would justify simply ignoring the implementing regulations or supplanting the Attorney General's powers that existed prior to the HAS and/or over immigration removal proceedings. Accordingly, Petitioner's claim is that both ICE and EOIR are ignoring and refusing to fulfill their obligations under the implementing regulations. Allowing an internal memorandum or an ICE Director's policy to override properly promulgated regulations would be an *ultra vires* act.

67. In short: Because the *Buenrostro-Mendez* panel did not address whether DHS and EOIR have failed to follow their own extant regulations, this Court is not barred from holding that the Petitioner is entitled to a bond hearing under the plain language of 8 C.F.R. § 1003.19 and the failure to provide one should be remedied by immediate release.

IV. Superfluous Language

68. Petitioner further disagrees with the *Buenrostro-Mendez* Court's interpretation that the government's new (Petitioner would deem it unlawful) application of § 1225(b)(2) does not deem other provisions of the INA superfluous.⁴⁷

⁴⁷ *Buenrostro-Mendez v. Bondi*, 2026 WL 323330, at *504-505.

69. For decades, noncitizens in removal proceedings found in the U.S., who are not described in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2), were able to request a bond hearing and obtain a bond from an IJ.⁴⁸ An illustration of the provisions in § 1226(c) and 1003.19(h)(2)(i) that are rendered superfluous under the government's new (incorrect) interpretation of § 1225(b)(2)(A) can be seen below:

8 U.S.C. § 1226(c): Detention of criminal aliens (1) Custody The Attorney General shall take into custody any alien who-- ~~(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title, (B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title, (C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence¹ to a term of imprisonment of at least 1 year, (D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title, or (E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.~~⁴⁹

8 C.F.R. § 1003.19(h)(2)(i): ~~(A) Aliens in exclusion proceedings; (B) Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act; (C) Aliens described in section 237(a)(4) of the Act; (D) Aliens in removal proceedings subject to section 236(c)(1) of the Act . . . ; and (E) Aliens in deportation proceedings subject to section 242(a)(2) of the Act.~~

⁴⁸ *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3-4 (“Until DHS and DOJ adopted the policy described below, the longstanding practice of the agencies charged with interpreting and enforcing the INA applied § 1226(a) to noncitizens like Petitioner, who entered the U.S. without inspection and were apprehended while residing in the U.S.”).

⁴⁹ 8 U.S.C. § 1226(c)(1)(E).

70. One need not look any further than 8 C.F.R. § 1003.19(h)(2)(iii)(B) to see that the statutory and regulatory scheme was always intended to give Immigration Judges jurisdiction to grant bond to most noncitizens falling under the definition of “applicant for admission.” This is demonstrated by the fact that the regulations governing an Immigration Judge's bond jurisdiction explicitly strip the Judge of authority over “arriving aliens” which are a subset of noncitizens who fall under the definition of “applicants for admission.”⁵⁰ Specifically, 8 C.F.R. § 1.2 defines an arriving alien as:

*Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section [§ 1182(d)(5)] of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section [1225(b)(1)(A)(i)] of the Act.*⁵¹

71. If, as the government now contends, every noncitizen who is an “applicant for admission” is subject to mandatory detention for bond purposes, there would have been no need for a regulation stating immigration judges do not have jurisdiction to grant “arriving aliens” a bond.

⁵⁰ 8 C.F.R. § 1003.19(h)(2)(iii)(B).

⁵¹ 8 C.F.R. § 1.2 (emphasis added).

72. Petitioner is not an "arriving alien"; nor is he subject mandatory detention under § 1225(b). Rather, he is an alien arrested within the United States and detained under 8 U.S.C. § 1226(a).

73. Recently, countless courts have repeatedly pointed out that under the government's new theory, the Laken Riley Act (LRA) is completely devoid of any meaning, as every person described in § 1226(c)(1)(E)(i) was already subject to mandatory detention under the government's new interpretation of § 1225(b)(2)(A).⁵² Congress, therefore, would have enacted a statute that accomplished nothing. It is a foundational principle of statutory construction that courts must "give effect, if possible, to every clause and word of a statute,"⁵³ and must avoid interpretations that render statutory language superfluous.⁵⁴ The government's position violates this canon in the most profound way, effectively nullifying an entire act of Congress. The only logical conclusion is that Congress enacted § 1226(c)(1)(E) precisely because being EWI or an "applicant for admission" alone *does not* trigger mandatory detention.⁵⁵

⁵² 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.").

⁵³ *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

⁵⁴ See *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013).

⁵⁵ Another (of many) applicable canons of statutory construction is the principle of *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another—further clarifies congressional intent. Within INA § 235 itself, Congress knew precisely how to mandate detention when it intended to. For example, INA § 235(b)(1)(B)(iii)(IV), titled "Mandatory detention," explicitly states that noncitizens found *not* to have a credible fear of persecution "shall be detained" pending removal. Congress's choice to use specific mandatory language in that subsection, while omitting it for all other "applicants for admission" under § 235(a), demonstrates a clear intent not to subject all such individuals to mandatory detention.

74. For all of the aforementioned reasons, the Petitioner respectfully disagrees with the Fifth Circuit's findings in *Buenrostro-Mendez*, and its application to his case in violation of *stare decisis*.

**PETITIONER'S DETENTION VIOLATES THE FOURTH AMENDMENT AND
DUE PROCESS**

I. Overview of Relevant Constitutional Principles

75. While *Buenrostro-Mendez* currently controls the question of whether § 1225(b)(2)(A) applies to all applicants for admission who are detained in connection with their first encounter by DHS, “the *Buenrostro-Mendez* Court did not reach the due process question.”⁵⁶ “Indeed, *Buenrostro-Mendez* only addressed a statutory claim based upon varying interpretations of 8 U.S.C. § 1225 versus § 1226.”⁵⁷ It did not address and does not preclude consideration of constitutional and other claims asserted by petitioners seeking relief from alleged unlawful detention.”⁵⁸

76. Congress may expand the protections granted by the Constitution through statute, but it cannot legislate away fundamental constitutional guarantees. The Fourth Amendment's protection against unreasonable seizures applies to all persons within the territory of the United States, including noncitizens. Immigration officials may not detain individuals encountered in the interior indefinitely or without probable cause; the Fourth

⁵⁶ *Aleska Jamaly Bonilla Con-forme v. De Anda-Ybarra*, No. EP-26-CV-263-KC, 2026 WL 381110, at *1–2 (W.D. Tex. Feb. 11, 2026).

⁵⁷ See *Buenrostro-Mendez*, 2026 WL 323330, at *1.

⁵⁸ *Mendoza v. Noem*, Case No. 5:26-cv-0728-JKP, ECF No. 9 at 7 (W.D. Tex. Feb. 26, 2026).

Amendment simply does not permit it. ““Longstanding precedent establishes that ‘[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.’”⁵⁹

77. The Due Process Clause of the Fifth Amendment guarantees that no person in the United States shall be deprived of liberty without due process.⁶⁰ These substantive and procedural due process protections apply to all people, including noncitizens, regardless of their immigration status.⁶¹ The Due Process Clause provides heightened protection against government interference with certain fundamental rights—and freedom from detention lies at the heart of the Due Process Clause’s protections. For persons in the United States (even unlawfully), courts across Texas have found that noncitizens who have established a life here—albeit without authorization—possess a strong liberty interest in their freedom from detention.⁶²

⁵⁹ *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16–19, (1968)); see also *Dunaway v. New York*, 442 U.S. 200, 216 (1979) (“[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.”).

⁶⁰ U.S. Const. amend. V.

⁶¹ *Trump v. J.G.G.*, 604 U. S. ---145 S. Ct. 1003, 1006 (2025) (*per curiam*) (“‘It is well established that the Fifth Amendment entitles aliens to due process of law’ in the context of removal proceedings.” (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993))).

⁶² See, e.g., *Ochoa v. Vergara*, No. 1:26-CV-266-RP, 2026 WL 482211, at *3 (W.D. Tex. Feb. 20, 2026); *Vieira v. De Anda-Ybarra*, 806 F.Supp.3d 690, 701 (W.D. Tex. 2025) (“In sum, Section 1225(b)(2) as applied to Petitioner violates his Fifth Amendment Due Process rights.”); *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *3 (W.D. Tex. Oct. 21, 2025) (“[T]he Court does not reach the statutory interpretation question because, assuming without finding that the Government’s new interpretation is correct, [petitioner] is entitled to due process and succeeds in his as-applied challenge.”); *Ortega-Aguirre v. Noem*, No. 4:25-CV-04332, 2025 WL 3684697, at *3 (S.D. Tex. Oct. 10, 2025) (“Here, the Court finds that Petitioner is likely to prevail on the merits of his due process claim because he ‘has been detained since August of 2025 without any individualized assessment of flight risk or dangerousness.’ ”); *Cordova v. Noem*, No. 3:26-CV-97-K-BN, 2026 WL 218938, at *3 (N.D. Tex. Jan. 28, 2026) (“[T]he Court holds that

II. Petitioner's Fourth Amendment and Due Process Rights have been Violated, As Applied

78. As stated earlier, the Fourth Amendment applies to all seizures of a person, no matter how brief. Caselaw has “clearly established . . . that immigration stops and arrests [are] subject to the same Fourth Amendment requirements that apply to other stops and arrests—reasonable suspicion for a brief stop, and probable cause for any further arrest and detention.”⁶³ A “robust consensus of cases [and] persuasive authority” in this area makes it “beyond debate that an immigration officer . . . would need probable cause to arrest and detain individuals for the purpose of investigating their immigration status.”⁶⁴

79. The Supreme Court, in *Zadvydas v. Davis*, explained the critical distinction between those outside the U.S. and those within it when it comes to the due process required before they may be deprived of their liberty:

denying Petitioner a bond hearing under § 1225(b)(2) deprives him of procedural due process protections under the Fifth Amendment.”); *Camacho-Gutierrez v. Thompson*, No. 5:25-CV-01876-MA, 2026 WL 195758, at *5 (W.D. Tex. Jan. 16, 2026) (“[T]he Court finds that Petitioner's detention without any notice or an individualized assessment deprives her of the constitutional right to procedural due process”); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025) (finding “that detaining [petitioner] without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to procedural due process,” and collecting cases); *George v. Noem*, No. 3:25-CV-2935-S-BW, 2025 WL 3852946, at *4 (N.D. Tex. Dec. 19, 2025), *report and recommendation adopted*, No. 3:25-CV-02935-S-BW, 2026 WL 30829 (N.D. Tex. Jan. 5, 2026) (“[D]etaining [petitioner] without a bond hearing violates his Fifth Amendment rights.”).

⁶³ *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969)).

⁶⁴ *Id.* at 216-17 (citing *Au Yi Lau*, 445 F.2d at 222; *see, e.g., Tejeda-Mata v. Immigration & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir.1980) (“The phrase ‘has reason to believe’ [in § 1357] has been equated with the constitutional requirement of probable cause.”); *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir.1975) (“The words [in § 1357] of the statute ‘reason to believe’ are properly taken to signify probable cause.”); *see also United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir.2010) (“Because the Fourth Amendment applies to arrests of illegal aliens, the term ‘reason to believe’ in § 1357(a)(2) means constitutionally required probable cause.”).

The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once an alien enters the country, *the legal circumstance changes, for the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.* Indeed, this Court has held that the Due Process Clause protects an alien subject to a final order of deportation, though the nature of that protection may vary depending upon status and circumstance.⁶⁵

80. Moreover, *Zadvydas* left no doubt that civil detention, including in the immigration context, requires a sufficient justification—namely preventing flight or danger to the community.⁶⁶ Where no such justification exists detention without due process is unconstitutional.⁶⁷

81. Despite the abundantly clear requirements of the Fourth Amendment, the government now argues that a statute with no warrant requirement (8 U.S.C. § 1225(b)(2)), historically applied at or near the border, allows DHS to arrest or detain aliens in the interior of the United States without any concern for the Fourth Amendment's protections. This is woefully incorrect, and has resulted in repeated violations of the Fourth Amendment by Respondents.

82. As applied to Petitioner's case, Petitioner must have been seized without a warrant or a probable cause finding by an appropriate official—after all, the *Jennings* decision specifically pointed out that it would "make[] little sense" to "detain an alien

⁶⁵ *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001)

⁶⁶ *Id.*

⁶⁷ *Id.*

without a warrant at the border" under § 1225(b)(2)(A) and then require a warrant to be issued when they are placed in removal proceedings.⁶⁸ Said differently, the government has represented and is likely to respond to this petition by claiming that Petitioner is currently detained under § 1225(b)(2)(A), and therefore, it would make little sense that a warrant would be issued. The arrest therefore constituted an unreasonable seizure in violation of the Fourth Amendment.

83. Alternatively, should the government argue that a warrant was issued, then there can be no doubt that Petitioner is not detained under § 1225(b)(2)(A), but is plainly detained under § 1226. In such a case, there can be no doubt that the failure to provide a bond hearing under the implementing regulations constitutes a due process violation and an indisputable violation of the relevant agencies' regulations. Said differently, it is Petitioner's position that the warrant issue—never raised, discussed, briefed, or even alluded to in *Buenrostro-Mendez*—is a proverbial Catch-22 for the government: Either claim a warrant was not issued conceding a clear Fourth Amendment violation under long standing jurisprudence that neither *Jennings* nor *Buenrostro-Mendez* purported to overrule, or claim a warrant was issued in which case there can be no question that Petitioner's detention is under § 1226.

III. Lack of Notice in Violation of Due Process

84. The Fifth Amendment prevents arbitrary deprivation of liberty. In arresting Petitioner, ICE deprived Petitioner of any procedural protections.

⁶⁸ *Jennings v. Rodriguez*, 583 U.S. 281, 302, (2018).

85. “Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty, or property by adjudication be *preceded* by notice and opportunity for a hearing appropriate to the nature of the case.”⁶⁹

86. In Petitioner’s case, this was not done. Petitioner was arrested and detained without any notice as to the basis of his detention, without any allegations of his being a danger or flight risk, and without an opportunity for a hearing on these issues. Thus, as applied, his due process rights were violated, and continue to be.

IV. Even if *Hurtado* were decided correctly (which it was not), it still would be unlawful to detain Petitioner under the new interpretation as it constitutes an expansion amounting to a new rule which cannot be applied retroactively under longstanding Supreme Court and Fifth Circuit precedent.

87. Respondent’s detention of Petitioner is also unlawful because it is based on an Ex Post Facto rule change that has been impermissibly applied retroactively to Petitioner’s conduct: i.e. entering the United States without inspection.

88. Based on “familiar considerations of fair notice, reasonable reliance, and settled expectations,” the retroactivity doctrine does not permit the new rule/interpretation of § 1225(b)(2)(A) and § 1226 to be applied to Petitioner.⁷⁰ In the immigration context, where the stakes of deportation are immense, the Supreme Court has been particularly

⁶⁹ *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)(emphasis added).

⁷⁰ *Vartelas v. Holder*, 566 U.S. 257, 266 (2012) (quoting *INS v. St. Cyr*, 533 U.S. 289, 323 (2001)).

vigilant in guarding against the retroactive application of laws that alter the legal consequences of past actions.

89. Supreme Court and Fifth Circuit "precedent on administrative retroactivity instructs that 'retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles.'" ⁷¹ "To apply that instruction," the Fifth Circuit "'balance[s] the ills of retroactivity against the disadvantages of prospectivity.'" ⁷² This analysis asks the Court to determine whether the retroactive application of a new agency rule/interpretation "contravenes basic presumptions about our legislative system" and "would compromise the 'familiar due process considerations of fair notice, reasonable reliance, and settled expectations.'" ⁷³ *sgf*

90. In *INS v. St. Cyr*, the Supreme Court held that the repeal of a form of discretionary relief from deportation could not be applied retroactively to individuals who had pleaded guilty to criminal offenses at a time when that relief was available. ⁷⁴ The Court emphasized that "elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." ⁷⁵

⁷¹ *Faudoa-Gonzalez v. Barr*, 836 F. App'x 242, 246–47 (5th Cir. 2020)(quoting *Microcomputer Tech. Inst. v. Riley*, 139 F.3d 1044, 1050 (5th Cir. 1998) (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 202 (1947)).

⁷² *Monteon-Camargo v. Barr*, 918 F.3d 423, 430 (5th Cir. 2019) (quoting *Microcomputer Tech. Inst.*, 139 F.3d at 1050.).

⁷³ *Id.* at 430–31 (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994)).

⁷⁴ *St. Cyr*, 533 U.S. at 325.

⁷⁵ *Id.* at 321.

91. Similarly, in *Vartelas v. Holder*, the Court found that an amendment to the INA that broadened the definition of who is "seeking admission"—thereby subjecting certain returning lawful permanent residents to new grounds of inadmissibility—could not be applied to an individual whose conviction predated the statutory change.⁷⁶ The Court reasoned that to do so would "attach a new disability, in respect to transactions or considerations already past."⁷⁷

92. This principle against retroactivity extends not only to statutory amendments but also to new judicial interpretations of existing law that dramatically shift the legal landscape. The United States Court of Appeals for the Fifth Circuit, in *Monteon-Camargo v. Barr*, 918 F.3d 423 (5th Cir. 2019), addressed the retroactive application of the Board of Immigration Appeal's decision in *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847 (BIA 2016) which significantly expanded the scope of what constitutes a "crime involving moral turpitude" (CIMT). The Fifth Circuit held that applying this new, broader definition to conduct that occurred before the decision was issued would be impermissibly retroactive because it would upend the "settled expectations" of individuals concerning the immigration consequences of their actions.⁷⁸ The court conducted a balancing test, weighing the "ills of retroactivity against the disadvantages of prospectivity" and found

⁷⁶ See generally *Vartelas*, 566 U.S. 257.

⁷⁷ *Id.* at 266 (internal quotation marks omitted).

⁷⁸ *Id.* at 430-31.

that the frustration of the parties' expectations outweighed any benefit of retroactive application.⁷⁹

93. This consistent and robust body of case law establishes a clear rule: new statutory provisions or judicial interpretations that impose new, adverse immigration consequences for past conduct cannot be applied retroactively. Accordingly, even if the government's new interpretation and application of 8 U.S.C. § 1225(b) was correct, its detention of Petitioner based on this indisputably new rule change violates the longstanding precedent on the doctrine of retroactivity. This is true because its retroactive application "contravenes basic presumptions about our legislative system" and "would compromise the 'familiar due process considerations of fair notice, reasonable reliance, and settled expectations.'"⁸⁰ fg

V. Petitioner's Continued Detention Violates Due Process

94. In *Zadvydas v. Davis*, the Supreme Court left no doubt that civil detention, including in the immigration context, requires a sufficient justification— namely preventing flight or danger to the community.⁸¹ Where no such justification exists detention without due process is unconstitutional.⁸²

⁷⁹ *Id.* (quoting *Microcomputer Tech. Inst. v. Riley*, 139 F.3d 1044, 1050 (5th Cir. 1998)).

⁸⁰ *Id.* at 430–31 (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994)).

⁸¹ *Zadvydas v. Davis*, 533 U.S. 678, 693-694 (2001).

⁸² *Id.*

95. Here, the notion that Petitioner, who is not a flight risk or danger to anyone, may continue to be detained without a bond hearing to determine if there is justification for such detention, is contrary to the due process everyone is afforded in this country.

96. Continued unlawful detention is, by its very nature, an irreparable injury.⁸³ The Supreme Court has affirmed that “[f]reedom from imprisonment...lies at the heart of the liberty” protected by the Due Process Clause.⁸⁴ “Where, as here, the ‘alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary’.”⁸⁵

97. Everyday Petitioner continues to be detained in ICE custody, he suffers irreparable harm. The complete sudden loss of one’s freedom and liberty takes a significant toll on anyone in Petitioner’s circumstances.

98. Recently, many aliens in ICE custody have suffered the ultimate irreparable harm of death. On May 14, 2025, in an oversight hearing before the House Appropriations Committee, Todd Lyons, acting director of Immigration and Customs Enforcement, testified that 9 people have died in ICE custody since January 20, 2025.⁸⁶ A month after

⁸³ *Phong Phan v. Moises Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *5 (E.D. Cal. July 16, 2025) (“Further, ‘[i]t is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”) (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))).

⁸⁴ *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

⁸⁵ *Phan*, 2025 WL 1993735, at *5 (citing *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004))).

⁸⁶ This testimony can be found at the following link: <https://www.youtube.com/watch?v=QvoURiaxBmA>.

this testimony, on June 23, 2025, a 49-year old Canadian citizen died in ICE custody.⁸⁷ Reports of overcrowding, individuals being detained at facilities that are meant for processing and not set up for detention beyond a few hours are increasing, and other inhumane detention practices continue to rise. The risk of death, emotional trauma, and/or other irreparable harm coming to Petitioner is, tragically, all too real of a possibility.

99. Meanwhile, there will be *no* harm to Respondents if Petitioner is immediately released from ICE custody.

100. Further, there are no administrative remedies for Petitioner to exhaust that would not be futile.

A. Procedural Due Process under Mathews

101. Due process requires an opportunity to be heard at a meaningful time and in a meaningful manner.⁸⁸ Petitioner received no such opportunity and/or no such opportunity is available through the immigration courts at this time as a result of the Fifth Circuit's decision in *Buenrostro-Mendez*.

102. To determine whether government conduct violates procedural due process, the Court weighs three factors in *Mathews* for courts to weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be

⁸⁷ The ICE press release on this death can be found at the following link: <https://www.ice.gov/news/releases/canadian-national-ice-custody-passes-away>

⁸⁸ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures.⁸⁹

i. Private Interest

103. Petitioner's private interest is the right to be free from government detention. Being free from physical detention by the government is at the core of due process protection, and "is the most elemental of liberty interests."⁹⁰ In our country, "liberty is the norm, and detention without trial "is the carefully limited exception."⁹¹

104. Even "noncitizens already in the country who have 'established a life here- albeit without authorization,' possess 'a strong liberty interest in their freedom from detention.'"⁹² "This is 'consistent with the longstanding principle that due process applies to those who are present in the interior of the United States, regardless of their citizenship status.'"⁹³

105. The private interest here is fundamental: freedom from detention. "No one can reasonably question that freedom from physical detention is one of the most sacred and elemental of liberty interests."⁹⁴ It weighs heavily in the consideration of the *Mathews* factors.

⁸⁹ *Id.* at 335.

⁹⁰ *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

⁹¹ *Id.*

⁹² *Mendoza v. Noem*, Case No. 5:26-cv-0728-JKP, ECF No. 9 at 12 (W.D. Tex. Feb. 26, 2026) (quoting *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025)).

⁹³ *Id.*

⁹⁴ *Mendoza*, ECF No. 9 at 14.

ii. Risk of Erroneous Deprivation

106. The second factor—the risk of erroneous deprivation of Petitioner's liberty—is likewise substantial. The government's application of § 1225(b)(2) prevents Petitioner from access to a pre-deprivation bond hearing *at all*. In so doing, the government is attempting to evade their burden to show that Petitioner presents a flight risk or danger, in direct contradiction of the law. “There is ‘a very high risk of erroneous deprivation of liberty’ absent an individualized custody determination.”⁹⁵

iii. Government Interest

107. The government has no valid interest in depriving Petitioner of a bond hearing. The government's interest is *supposed* to be upholding the Constitution and laws of the United States, both of which are plainly violated by its arrest and continued unlawful detention of Petitioner. Depriving anyone of their liberty is a serious thing that should only be done when necessary to prevent flight or danger to the community. Petitioner is neither in this case.

108. To balance liberty interests against interests in assuring appearance and safety, the INA explicitly provides bond hearings for noncitizens who are not described in § 1226(c) or 8 C.F.R. § 1003.19(h). The government, however, wants to detain everyone without any regard to whether they are a danger or a flight risk.⁹⁶

⁹⁵ *Id.* (citing *Cruz-Reyes v. Bondi*, No. 5:26-cv-60, 2026 WL 332315, at *7 (S.D. Tex. Feb. 3, 2026)).

⁹⁶ *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271, at *4 (D.Neb. Aug. 19, 2025) (“The governmental interest in the continued detention of these least-dangerous individuals, in contravention of the order of a neutral fact-finder, does not outweigh the liberty interest at stake.”).

109. On balance, the private interests affected and the risk of erroneous deprivation, under the current procedures, greatly outweigh the government's interest. "In the immigration detention context involving noncitizens with a substantial presence in the United States who have not received any individualized assessment of flight risk or dangerousness, each of the three factors – affected private interest; risks of erroneous deprivation, including 'the probable value, if any of additional or substitute procedural safeguards;' and the Government's interest – support finding that the noncitizen has been denied procedural due process."⁹⁷

110. Petitioner's detention without an individualized bond hearing by a neutral adjudicator violates Petitioner's substantive due process rights as guaranteed by the Fifth Amendment.

CLAIMS FOR RELIEF

I. COUNT I: VIOLATION OF THE INA

111. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

112. Section 1225(b)(2)(A) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such

⁹⁷ *Mendoza*, ECF No. 9 at 13 (citing *Martinez*, 2025 WL 2965859, at *4-5).

noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), § 1231, or 8 C.F.R. § 1003.19(h).

113. The continued detention of Petitioner, who is not described in § 1226(c) or § 1003.19(h)(2), without a bond hearing before an IJ, violates the INA as well as the U.S. Constitution. Accordingly, it is unlawful.

II. COUNT II: ICE & EOIR'S VIOLATION OF THEIR OWN REGULATIONS AND PROCEDURES

114. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

115. Petitioner's continued detention by Respondents without a bond hearing pursuant to the process set forth by 8 U.S.C. § 1226's implementing regulations found at 8 C.F.R. § 1003.19 and 8 C.F.R. § 1236.1 is unlawful as ICE and EOIR failed to adhere to the law and mandatory process. As here, “‘where an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute ... and [ICE] fails to adhere to it, the challenged [action] is invalid.’”⁹⁸ Petitioner's detention is unlawful and his immediate release is appropriate.

III. COUNT III: VIOLATION OF THE FOURTH AMENDMENT

116. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

⁹⁸ *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *5 (D.Mass. June 20, 2025) (quoting *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)); see also *Zadvydas*, 533 U.S. at 690 (“The Fifth Amendment's Due Process Clause forbids the Government to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of law.’ Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.”).

117. Petitioner's arrest by Respondents without the issuance of a warrant is unlawful and constitutes a violation of the Fourth Amendment. Petitioner's detention is thus unlawful, and his immediate release is appropriate.

IV. COUNT IV: VIOLATION OF RETROACTIVITY DOCTRINE

118. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

119. Even if the government's new interpretation and application of 8 U.S.C. § 1225(b)(2)(A) is correct as *Buenrostro-Mendez* concluded, Petitioner's detention based on the retroactive application of that new rule/interpretation is unlawful under the well-established retroactivity doctrine and precedent applying it to the INA. This is true because its retroactive application "contravenes basic presumptions about our legislative system" and "would compromise the 'familiar due process considerations of fair notice, reasonable reliance, and settled expectations.'"

V. COUNT V: VIOLATION OF DUE PROCESS

120. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

121. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects."⁹⁹

⁹⁹ *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

122. Petitioner has a fundamental interest in liberty, and being free from official restraint.

123. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process. Petitioner's detention is thus unlawful, and his immediate release is appropriate.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter and issue a writ of habeas corpus requiring that Respondents release Petitioner Immediately; alternatively, provide Petitioner with a bond hearing before a neutral IJ pursuant to 8 U.S.C. § 1226(a) within three days where it will be the Department's burden to provide by clear and convincing evidence that Petitioner poses a danger or flight risk;
- b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days; and
- c. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

Dan Gividen

Texas State Bar No. 24075434

18208 Preston Rd., Ste. D9-284

Dallas, TX 75252

972-256-8641

Dan@GividenLaw.com

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 31, 2026

Respectfully submitted,

s/Erika N. Salter

Erika N. Salter, Esq.

Petitioner's Immigration Attorney

Texas State Bar No. 24051284

1140 Empire Central Place, Suite 106C

Dallas, TX 75247

(214) 524-9217

erikasalter@erikasalterlaw.com