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Pro Bono Counsel for Petitioner Manuel Soto Munoz

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Manuel SOTO MUNOZ,
Petitioner,

v.

Fereti SEMAIA, et al.
Respondents.

No. 5:25-cv-02898-MRA-BFM

PETITIONER'S REPLY TO *EX*
PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION

1
2 **I. INTRODUCTION**

3 Petitioner hereby replies to Respondents’ October 31, 2025 Opposition to his
4 *Ex Parte* Application for Temporary Restraining Order. Dkt # 8. Two months ago,
5 in *Mateo Juan Andres Salvador v. Pamela Jo Bondi*, this Court issued a well-
6 reasoned and lengthy decision granting an Ex Parte Temporary Restraining Order
7 (“TRO”) on very similar facts, involving the same legal questions, finding that the
8 Petitioner was likely to succeed “in proving that the mandatory detention provision
9 under [[8 U.S.C. § 1225\(b\)](#)] applies only to arriving noncitizens who are deemed
10 inadmissible upon inspection, not noncitizens who have entered the country and are
11 arrested following internal enforcement operations.” No. 2:25-CV-07946-MRA-
12 MAA, [2025 WL 2995055](#), *7 (C.D. Cal. Sept. 2, 2025). This Court should do the
13 same here, as Respondents have completely failed to grapple with this Court’s
14 reasoning or explain why it is wrong—instead repeating the same arguments they
15 have been offering for months that nearly every district court in the country,
16 including this one, has rejected.

17 **II. ARGUMENT**

18 **A. CASELAW IS CLEAR THAT THIS COURT HAS**
19 **JURISDICTION TO CONSIDER PETITIONER’S**
20 **CHALLENGE**

21 Respondents argue that the Court lacks jurisdiction to consider the Ex Parte
22 Application for Temporary Restraining Order. Dkt # 8 at 5-9. They are attempting
23 to frame that Petitioner’s Habeas petition and TRO is a challenge to a decision to
24 *commence removal* proceedings because that is what led to his detention. *Id.*
25 However, this Court, and nearly every district court faced with the question of
26 whether [8 U.S.C. § 1252](#) bars jurisdiction over noncitizens detained by
27 Respondents, has rejected the government’s jurisdictional arguments as squarely
28 inconsistent with relevant Supreme Court and Ninth Circuit precedent. *See, e.g.,*

1 *Mateo Juan Andres Salvador v. Pamela Jo Bondi*, No. 2:25-CV-07946-MRA-
2 MAA, 2025 WL 2995055 at *3-5 (finding jurisdiction to review Respondents’
3 detention authority) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S.
4 471, 482 (1999); *Jennings v. Rodriguez*, 583 U.S. 281, 294-296 (2018)); *see also*
5 *Ibarra-Perez v. United States*, — F.4th —, —, 2025 WL 2461663 (9th Cir.
6 Aug. 27, 2025).

7 8 U.S.C. § 1252(g) does not apply to questions of law or custody claims. The
8 bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear “any
9 cause or claim by or on behalf of any alien arising from the decision or action by
10 the Attorney General to commence proceedings, adjudicate cases, or execute
11 removal orders against any alien under this chapter.” The Supreme Court
12 previously characterized § 1252(g) as a narrow provision, applying “only to three
13 discrete actions that the Attorney General may take: her ‘decision or action’ to
14 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v.*
15 *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in
16 original). In doing so, the Supreme Court found it “implausible that the mention of
17 *three discrete events* along the road to deportation was a shorthand way to referring
18 to *all claims arising from* deportation proceedings.” *Id.* (emphasis added).

19 Here, just like the Petitioner in *Mateo Juan Andres Salvador*, instant
20 Petitioner’s TRO “do[es] not implicate any of the three, discretionary actions of the
21 Attorney General under § 1252(g). *Mateo Juan Andres Salvador v. Pamela Jo*
22 *Bondi, et al.*, No. 2:25-CV-07946-MRA-MAA, 2025 WL 2995055, at *5 (C.D. Cal.
23 Sept. 2, 2025). This Court reasoned that “[p]etitioner challenges whether he is
24 subject to mandatory detention during the pendency of his removal proceedings,
25 not ICE’s discretionary authority to decide “when”, “where”, and “whether” to
26 detain him and commence removal proceedings.” *Id.*

27 A recent Ninth Circuit case affirmed that courts “have jurisdiction to decide a
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1 ‘purely legal question’ that ‘does not challenge the Attorney General's discretionary
2 authority ... even if the answer to that legal question ... forms the backdrop against
3 which the Attorney General later will exercise discretionary authority.’ ” *Ibarra-*
4 *Perez v. United States*, — F.4th —, —, [2025 WL 2461663](#), *6 (9th Cir. Aug.
5 27, 2025) (quoting *United States v. Hovsepian*, [359 F.3d 1144, 1155](#) (9th Cir.
6 2004)); see *Rodriguez v. Bostock*, --- F.Supp.3d ---, [2025 WL 2782499](#), *8 (W.D.
7 Wash. Sept. 30, 2025) (quoting *Ibarra-Perez*).

8 Indeed, “[t]he extent of the Government’s detention authority is not a matter
9 of ‘discretionary judgment,’ ‘action,’ or ‘decision.’” *Jennings v. Rodriguez*, [583](#)
10 [U.S. 281, 296](#) (2018); *Mateo Juan Andres Salvador v. Pamela Jo Bondi*, [2025 WL](#)
11 [2995055](#), at *4 (quoting *Jennings*). Consequently, “challenges to the statutory
12 framework that permits the noncitizen’s detention without bail and questions of law
13 raised in the application or interpretation of detention statutes and claims that the
14 discretionary process itself was constitutionally flawed are cognizable in federal
15 court on habeas...” *Mateo Juan Andres Salvador v. Pamela Jo Bondi*, [2025 WL](#)
16 [2995055](#), at *4 (quoting *Jennings*, *Leonardo v. Crawford*, [646 F.3d 1157](#) (9th Cir.
17 2011) and *Singh v. Holder*, [638 F.3d 1196](#) (9th Cir. 2011))(marks and citations
18 omitted).

19 Therefore, Section 1252(g) does not apply to a legal custody challenge.
20 *Mateo Juan Andres Salvador v. Pamela Jo Bondi*, [2025 WL 2995055](#), at *4 (“The
21 government's reading of Section 1252(g) is impermissibly broad and inconsistent
22 with Supreme Court precedent, which has long stressed that § 1252(g) does not
23 sweep in any claim that can technically be said to ‘arise from’ the three listed
24 actions of the Attorney General.”)(quoting *Jennings* and citing *Reno*); *Mosqueda v.*
25 *Noem*, No. 5:25-CV-02304 CAS (BFM), [2025 WL 2591530](#), at *3 (C.D. Cal. Sept.
26 8, 2025) (“Petitioners’ challenge to their detention does not fall within these
27 discrete actions. Since petitioners' bond denial claims do not challenge any decision
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1 to commence proceedings, adjudicate cases, or execute removal orders, the Court
2 finds that section 1252(g) does not present a jurisdictional bar to judicial review.”);
3 *Vasquez Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *4
4 (S.D. Cal. Sept. 3, 2025) (“Petitioners are enforcing their constitutional rights to
5 due process in the context of the removal proceedings—not the legitimacy of the
6 removal proceedings or any removal order. Therefore, § 1252(g) does not limit the
7 Court's jurisdiction in the present case.”); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
8 (ECT/DJF), 2025 WL 2466670, at *7 (D. Minn. Aug. 27, 2025) (“§ 1252(g) does
9 not deprive the Court of jurisdiction to consider the narrow legal question of
10 whether a non-citizen detained under authority of § 1226 is entitled to a bond
11 hearing under § 1226’s discretionary detention framework.”).

12 Similarly, 8 U.S.C. § 1252(a)(5) and 1252(b)(9) do not preclude review.
13 Respondents claim that Petitioner’s case is “a challenge to DHS’ decision to detain
14 them in the first instance,” Dkt #8 at 9, which is precluded by Section 1252(b)(9).
15 Yet, Petitioner does not challenge his removal proceedings before this Court, nor
16 the decision to detain Petitioner in the first instance but rather the detention without
17 process *after* the initial detention, which is outside the scope of 1252(a)(5) and
18 (b)(9). Once again, Respondents ignore the other cases addressing the same issue
19 which, in turn, rely on Supreme Court precedent finding that § 1252(b)(9) does not
20 apply. In *Jennings*, the Supreme Court determined that while the “arising from”
21 language of section 1252(b)(9) *did apply* to decisions to detain in the first place or
22 seek removal, it *did not apply* to challenges to the lawfulness of custody during a
23 removal proceeding. *Jennings*, 583 U.S. at 292-95.

24 Specifically, “[b]y the time a final order of removal was eventually entered,
25 the allegedly [unlawful] detention would have already taken place. And of course,
26 it is possible that no such order would ever be entered in a particular case,
27 depriving that detainee of any meaningful chance for judicial review.” *Jennings*,
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1 583 U.S. at 293; *Mateo Juan Andres Salvador*, 2025 WL 2995055, at *4 (quoting
2 *Jennings*); *Rodriguez v. Bostock*, 2025 WL 2782499, at *9-10 (citing *Jennings*); *See*
3 *also Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 810 (9th Cir. 2020)
4 “[C]laims challenging the legality of detention pursuant to an immigration detainer
5 are independent of the removal process.”); *Vasquez Garcia v. Noem*, No. 25-CV-
6 02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025) (“Their
7 detention pursuant to § 1225(b)(2) may be during—but is nonetheless independent
8 of—the removal proceedings. Accordingly, § 1252(b)(9) does not strip this Court
9 of jurisdiction.”); *Mosqueda*, 2025 WL 2591530, at *3 (quoting *Jennings*).

10 Lastly, the Government cites Justice Thomas’ concurring opinion in *Jennings*
11 for the proposition that “detention *is* an ‘action taken ... to remove’ an alien,” yet,
12 the majority opinion explicitly rejects this argument, stating “[t]he question is not
13 whether *detention* is an action taken to remove an alien but whether *the legal*
14 *questions* in this case arise from such an action.” *See Jennings*, 583 U.S. at 294
15 n.3; *Mateo Juan Andres Salvador*, 2025 WL 2995055, at *5 (quoting *Jennings*);
16 *Rodriguez*, 2025 WL 2782499, at *10 (Justice Thomas’ opinion is “a concurrence
17 in part and a concurrence in the judgement,” and “explicitly rejected” by the
18 *Jennings* plurality).

19 Therefore, this Court has jurisdiction to consider Petitioner’s challenge to his
20 unlawful mandatory detention.

21 **B. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS**

22 Petitioner is likely to succeed on the merits. Respondents’ arguments that
23 Petitioner is not likely to succeed on the merits of their claim is disingenuous, given
24 that nearly every district court, including this one, to address this issue has found that
25 individuals who entered the United States without admission are eligible for bond
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1 hearings pursuant to 8 U.S.C. § 1226(a).^{1,2} *Mateo Juan Andres Salvador v. Pamela*
2 *Jo Bondi, et al.*, No. 2:25-CV-07946-MRA-MAA, 2025 WL 2995055 (C.D. Cal.
3 Sept. 2, 2025); *Vasquez Garcia v. Noem*, 3:25-cv-02180-DMS-MMP (SD. Cal. Sept.
4 3, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS) C.D. Cal. Aug. 26, 2025);
5 *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM (C.D. Cal. Aug. 15, 2025);
6 *Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28,
7 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *2 (D.
8 Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D.
9 Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL
10 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
11 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn. Aug. 27, 2025); *Kostak v. Trump*,
12 No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025). These line
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14 ¹ The government's citation to a recent Southern District of California is
15 inapposite. *Chavez v. Noem* reasons that under 8 U.S.C. § 1225(a)(1), "an alien
16 present in the [U.S.] who has not been admitted...shall be deemed...an applicant for
17 admission," and immediately categorizes the petitioners in that matter under section
18 1225(b)(2). *See* --- F.Supp.3d ---, 2025 WL 2730228 at *4 (S.D. Cal. Sept. 24, 2025).
19 First, Chavez rejects the jurisdiction-barring arguments, allowing the Court to render
20 a decision. Second, nowhere in *Chavez* does the Court explore the import of the
21 phrase "seeking admission" in 1225(b)(2). Instant Petitioner extensively addresses
22 this in his prior briefing, citing numerous authorities including *Jennings* and
23 *Rodriguez* to argue that "seeking admission" is a material textual distinction between
24 1225(b)(2) and 1226(a). *See* Dkt # 3, ¶¶ 17-20. Lastly, Chavez dealt exclusively with
25 1225(a) rather than the applicability of 1225(b) to Petitioner, which distinguishes this
26 case entirely from the matter before this Court.

27 ² The government's citation to a district court case from the other side of the
28 country, *Florida v. United States*, 660 F.Supp.3d 1239 (N.D. Fla. 2023), is also not
instructive. *Florida* involved detention protocols for noncitizens arriving at the
border, rather than already present in the United States. *See Rodriguez*, 2025 WL
2782499, at *21. In fact, *Florida* quotes *Jennings*
for its holding that "§ 1226 applies to certain aliens already in the country." *Florida*,
660 F. Supp. 3d at 1275 (quoting *Jennings*, 583 U.S. at 289); *Rodriguez*, 2025 WL
2782499 at *21 (discussing *Florida v. United States*).

1 of cases reach the same conclusion after the Board’s decision in *Matter of YAJURE*
2 *HURTADO*, 29 I&N Dec. 216 (BIA 2025). See *Rodriguez-Vazquez v. Bostock*, --- F.
3 Supp. 3d ---, 2025 WL 2782499 (W.D. Wash. 2025)(granting summary judgment);
4 *Guerrero Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910
5 (E.D. Cal. Sept. 23, 2025); *Sanchez Roman v. Nguyen*, No. 2:25-CV-01684-RFB-
6 EJY, 2025 WL 2710211, at *6 (D. Nev. Sept. 23, 2025); *Beltran Barrera v. Tindal*,
7 No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *6 (W.D. Ky. Sept. 19, 2025);
8 *Maldonado Vasquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082,
9 at *10 (D. Nev. Sept. 17, 2025).

10 All these decisions have held that 8 U.S.C. § 1225(b)(2) does not apply to
11 individuals who have made a physical entry into the interior of the United States
12 without inspection, including *Rodriguez-Vasquez v. Bostock* which was decided on
13 summary judgment. See *Mateo Juan Andres Salvador*, 2025 WL 2995055, at *6
14 (“[T]he Court finds at the TRO stage that Petitioner is likely to succeed in proving
15 that the mandatory detention provision under Section 1225(b) applies only to
16 arriving noncitizens who are deemed inadmissible upon inspection, not noncitizens
17 who have entered the country and are arrested following internal enforcement
18 operations.”); *Rodriguez-Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL
19 2782499, at *18 (W.D. Wash. 2025) (The “Court concludes that Bond Denial Class
20 members are subject to discretionary detention under section 1226(a) rather than
21 mandatory detention under section 1225(b)(2).”); *Vasquez Garcia v. Noem*, 3:25-
22 cv-02180-DMS-MMP, at *6 (SD. Cal. Sept. 3, 2025) (“Respondents argue that
23 Petitioners, as inadmissible noncitizens, qualify as ‘applicants for admission’
24 ‘seeking admission’ and, therefore, are subject to mandatory under § 1225(b)(2).
25 (*Id.* at 15–16). Not so.”); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM),
26 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025) (“The Court finds that the
27 conflict is avoided by interpreting sections 1225(b)(2) and 1226(a) to apply to
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1 different sets of noncitizens—those “seeking admission” compared to those already
2 in the country who are arrested and detained”); *Pizarro Reyes v. Noem*, No. 25-CV-
3 12546, [2025 WL 2609425](#), at *1 (E.D. Mich. Sept. 9, 2025) (“Because Pizarro
4 Reyes arrived decades ago and has since then lived in the United States without
5 seeking lawful admission, he instead falls within § 1226(a)'s catchall provision for
6 the removal of noncitizens”).

7 Respondents argue that reading § 1225(b)(2) to exclude those noncitizens
8 who came to the United States would place them in a better position than the person
9 who sought admission at the border. *See* [Dkt. #8 at 12-13](#). Yet this was discussed
10 in the TRO, namely that Congress intended to equalize this by imposing on those
11 present in the U.S. “a greater burden of proof in removal proceedings” and “tougher
12 standards for most discretionary immigration benefits.” *Aceros v. Kaiser*, No. 25-
13 CV-06924-EMC (EMC), [2025 WL 2637503](#), at *11 (N.D. Cal. Sept. 12, 2025); *see*
14 *also* *Torres v. Barr*, [976 F.3d 918, 928](#) (9th Cir. 2020). Additionally, full due
15 process rights apply to those who have entered the United States without
16 inspection. *Zadvydas v. Davis*, [533 U.S. 678, 693](#), [121 S.Ct. 2491](#), [150 L.Ed.2d](#)
17 [653](#) (2001) (“[A]liens who have once passed through our gates, even illegally, may
18 be expelled only after proceedings conforming to traditional standards of fairness
19 encompassed in due process of law.”). It is logical under the current statutory
20 scheme that Petitioner who has resided in the U.S. for over 35 years should be
21 afforded access to a bond hearing.

22 Furthermore, Respondents’ parrot the reasoning in *Matter of Yajure Hurtado*,
23 [29 I&N Dec. 216, 220](#) (BIA 2025) in stating that the Laken Riley Act (“LRA”) is
24 simply a “redundanc[y] in statutory drafting.” *Dkt #8* at 13. However, as already
25 discussed in the TRO – which Respondents do not directly address – LRA would
26 be unnecessary if all people present within the U.S. without admission or parole
27 were subject to Section 1252(b)(2). *See* *Dkt #3* at 22-23.

1 While Respondents cite *Loper Bright* for the proposition that longstanding
2 agency practice “carries little, if any, weight,” the same argument can be said of the
3 BIA in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). See Dkt. #8
4 at 13-14 (citing *Loper Bright Enters v. Raimondo*, 603 U.S. 369 (2024)). As
5 discussed in Petitioner’s TRO, this Court need not defer to the faulty analysis by
6 Respondents, or the BIA in *Yajure Hurtado*, that goes against statutory analysis,
7 legislative history, and longstanding agency practice. See Dkt. #3 at 31-32; see
8 also Rodriguez, 2025 WL 2782499 at *25-26.

9 Lastly, Respondents do not address how they categorized Petitioner as
10 having “entered the [U.S.] at or near UNKNOWN LOCATION, on or about
11 unknown date” and not being “admitted or paroled after inspection by an
12 Immigration Officer,” and instead file a generic Opposition not tailored to the
13 arguments and facts in Petitioner’s case. See Dkt. #3-1, Exh. P. This raises serious
14 questions of whether Respondents have violated Petitioner’s 4th amendment rights,
15 and consequently whether Respondent should be detained at all.

16 As such, Petitioner establishes that he is likely to succeed on the merits of his
17 claim.

18 **C. AN INJUNCTION IS OTHERWISE WARRANTED.**

19 Next, Respondents contest the *Winter* factors only on the ground that the
20 balance of hardships favors the government. Dkt # 8 at 14. Respondents argue that
21 the government has a compelling interest in the steady enforcement of its
22 immigration laws. Dkt # 8 at 14. However, Petitioner does not ask the Court to
23 order that the government stop enforcing immigration laws. Rather, he asks the
24 Court to enforce them as Congress intended. And, ultimately, it is a neutral
25 adjudicator, who will decide Petitioner’s applications for bond, after determining
26 whether he is a danger to others or a flight risk which the government will have to
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1 show by clear and convincing evidence.³ 8 U.S.C. § 1226(a). Petitioner only asks
2 that Respondents release him from custody if he is not provided a custody
3 redetermination hearing before a neutral decisionmaker at which the government
4 bears the burden by clear and convincing evidence that he is either a danger or such
5 a flight risk that no bond conditions could mitigate pursuant to 8 U.S.C. § 1226(a)
6 within seven days of the TRO and enjoin the government from transferring his
7 custody out of the Central District of California, with an additional request to the
8 Court that the bond hearing be recorded and a transcript provided to the Court. *See*
9 *Mateo Juan Andres Salvador*, 2025 WL 2995055, at *10.

10 **III. CONCLUSION**

11 For the foregoing reasons, the Court should grant Petitioner's Application for
12 a Temporary Restraining Order and Order to Show Cause and order that he be
13 released, or in the alternative, that a neutral adjudicator hold a bond hearing
14 pursuant to 8 U.S.C. § 1226(a) at which the government bears the burden by clear
15 and convincing evidence that he is either a danger or such a flight risk that no bond
16 conditions could mitigate to prevent further irreparable injury within seven days of
17 the TRO with instructions that the adjudicator has jurisdiction under 8 U.S.C. §
18 1226(a) to consider bond, and that the bond hearing be recorded and a transcript
19 provided to the Court.

20
21 Dated: November 3, 2025

Respectfully Submitted,

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27 ³ Respondents do not challenge the burden of proof in bond or removal proceedings
28 in their Opposition briefing, and therefore have forfeited it. *See* 8 C.F.R. §
1240.8(c).

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18 Pro Bono Counsel for Petitioner
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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioner, certifies that this Memo contains 2,860 words, which complies with the Word Limit of L.R. 11-6.1.

/s/Vivek Mittal

Vivek Mittal
Pro Bono Counsel for Petitioner